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Addendum

A human rights analysis of economic and other land concessions in Cambodia*

Summary

The report, submitted in accordance with resolution 18/25 of 26 September 2011 of the Human Rights Council, is an assessment of the human rights impact of economic land concessions (ELCs) and other land concessions and major development projects in Cambodia (generally referred to as “land concessions” throughout the report unless otherwise specified). It includes not only an analysis of concessions pertaining to agro-industry (for example, rubber, sugar, acacia and cassava plantations), but also to concessions for mining, oil and gas, forestry, and concessions for the purposes of tourism, property development, and large scale infrastructure, such as hydropower dams.

During my mission, on 7 May 2012, the Prime Minister announced a Government initiative relating to economic land concessions, including the institution of a moratorium on the granting of new concessions and a review of the compliance of existing concessions with contractual and legal obligations of the concessionaires. He subsequently announced a rapid land titling initiative relating to people living near concessions. This report takes into account these recent developments and seeks to build on the positive aspects of these initiatives.

The report analyses information that I have received from the beginning of my mandate in 2009 through the end of July 2012, including the domestic legal framework governing land rights (and law and policies related to protected areas), international developments related to Cambodia’s human rights obligations involving land, and the impacts of economic and other land concessions on the enjoyment of human rights. The

* Circulated as received.

cases selected reflect these submissions. The report is based on official government data and information, analysis, individual petitions and testimonial evidence submitted by individuals, communities and local and international non-governmental organizations. The report also benefits from research done by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Cambodia, which is carrying out ongoing monitoring and advocacy related to this issue. While all my activities are carried out with the cooperation of the Government, it should be noted that the official documentation needed for a complete analysis in some areas was not forthcoming, and thus gaps in information exist in some places.

At the outset, it should be noted that historical circumstances, including the policies of the Khmer Rouge regime and the widespread destruction and dislocation left in the wake of Cambodia's lengthy civil war, have led to the proliferation of land disputes that the Government is trying to manage. Furthermore, it should also be noted that Cambodia as a developing country may wish to prioritize utilization of its land and natural resources in order for the country to develop and become more prosperous. Nevertheless, I am of the view that land concessions should be granted and managed within a sound legal and policy framework, including with due consideration for and consultation with those who will be affected, and with the sustainable use of natural resources in mind.

The majority of the challenges I have identified in this report (analysed in sections V-VIII) derive from a failure to apply the domestic legal framework – that is, the laws, policies and regulations that the Government itself has developed (explained in section III). The granting and management of economic and other land concessions in Cambodia suffer from a lack of transparency and adherence to existing laws. Much of the legal framework on these matters is relatively well developed on paper, but the challenge is with its implementation in practice.

Further, a pervasive problem that I have encountered is the uneven access to information, which has contributed to concessions benefiting only a minority, as well as a proliferation of land related conflicts, which has the potential to contribute to instability. The Government should be rigorous and transparent in the granting and monitoring of land concessions (sections II and VI), especially when negotiating concession agreements with both foreign and national companies, avoiding conflicts of interest, and holding concession companies to account by exercising oversight over their activities and resolving land disputes. Absence of transparency in such matters has bred suspicion of corruption at all levels of the Government and has fuelled resentment on the part of many Cambodian citizens. In spite of visiting Cambodia since 2009 and enjoying a relatively good level of cooperation from the Government in many areas covered under my mandate, I had difficulty in obtaining the necessary official information and in reaching companies holding economic and other land concessions. This lack of access to key information has made it extremely challenging to write a comprehensive report on these issues.

Cambodia, as an emerging market, risks developing an international reputation for insecure investment in the land sector and in general. The current climate of development is characterized by low transparency and uneven access to information, inadequate consultation, and participation which is not inclusive, and, in my view, is unsustainable and likely to hamper future national economic growth. Of course, some cases of land concessions seem to have had positive impacts for the people of Cambodia in terms of job creation, stimulation of the local economy, generation of revenue to finance public services, and overall contribution to national growth. However, the human cost of many concessions has been high, and human rights should be at the heart of the approach to the granting and management of land concessions in order for them to have a positive impact. There are well documented, serious and widespread human rights violations associated with land concessions that need to be addressed through remediation. Criminalization of land

activists and human rights defenders is particularly worrying, as freedom of expression and assembly is crucial to a well-functioning democratic society.

Moreover, throughout my analysis, I struggled to fully comprehend the benefits of many land concessions that the Government has granted. In general, it is not clear to what extent the people of Cambodia have actually benefited from land concessions and I am concerned that, despite the Government's commitment to fighting corruption, many concessionaires operate behind a veil of secrecy. Benefits from land concessions, where they exist, need to be quantified and made clearer, and if such benefits are not evident policies and practices around the granting of land concessions need to be modified. The impacts of land concessions should be analysed for both their short- and long-term consequences; indeed, benefits should be genuine and outweigh costs for the majority in order to be considered substantial. I am of the view that the development of Cambodia's land and natural resources could have a positive impact on the lives of all Cambodians if undertaken in a sustainable and equitable manner and within the framework of the human rights obligations of the Government, and it is in this constructive spirit that I present this report.

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I. Introduction and scope

1. This report, submitted in accordance with resolution 18/25 of 26 September 2011 of the United Nations Human Rights Council, is an assessment of the human rights impact of economic land concessions (ELCs) and other land concessions in Cambodia (generally referred to as “land concessions” throughout the report unless otherwise specified). It includes not only an analysis of concessions pertaining to agro-industry (for example, rubber, sugar, acacia and cassava plantations), but also to concessions for mining, oil and gas, forestry, and concessions for the purposes of tourism, property development, and large scale infrastructure, such as hydropower dams.

2. Since taking up my functions as Special Rapporteur in 2009, I have consistently received information about the human rights issues related to land concessions, including forced evictions, poorly planned resettlement and relocation, environmental destruction and unsustainable exploitation of natural resources, and threats to indigenous peoples’ livelihood, culture and traditions, among others. An increasing number of cases have also come to my attention in which individuals and communities claiming their rights to land, land activists, and other human rights defenders have been harassed, threatened or criminalized based on challenges to the granting and management of economic and other land concessions. I have monitored the issues throughout my mandate, and have had the opportunity to meet personally with various people affected by or knowledgeable of land concessions during my seven missions to the country. I have raised these issues in all my reports to the United Nations Human Rights Council, in some of my communications to the Royal Government of Cambodia, and in my dialogue with governmental representatives during my missions to the country.

3. Owing to the severity and persistence of these challenges, and the significant work done by my predecessors on ELCs, I focused my seventh mission to Cambodia in May 2012 on land concessions and present this report to the Human Rights Council as an addendum to my main report for 2011-2012, which focused on electoral reform. The objective was to have a fresh look at the human rights challenges posed by land concessions in light of the rapid growth in the number of concessions granted to both national and foreign companies and the detrimental impact of such concessions on the lives of the Cambodian people. The present report draws on the two previous reports on land concessions by two of my predecessors, the Special Representatives of the Secretary-General (SRSG) for human rights in Cambodia, in 2004 and 2007. However, whereas the previous two reports focused mainly on land concessions for agricultural purposes, this report covers a wide range of human rights issues related to agricultural as well as other types of land concessions, and some of these issues are new. I will refer to these two previous reports as “the 2004 SRSG Report” and “the 2007 SRSG Report” respectively throughout the present report. The current report includes analyses which pertain to the overall human rights impact of the granting and managing of economic and other land concessions in both urban and rural areas. However, owing to the worrying continuous degradation of Cambodia’s natural resources, I have decided in this report to pay special attention to land concessions in protected areas (see Annex I – Table of land concessions in protected areas).

4. During my May 2012 mission, I was able to visit the provinces of Rattanakiri, Stung Treng and Kratie, as well as the Municipality of Phnom Penh. In each province I met with communities affected by land concessions, as well as with the provincial authorities. I endeavoured to contact the businesses to whom the relevant concessions have been granted, and I will continue my efforts to interact with these businesses, which are central to how land concessions operate and are key beneficiaries. I was also able to meet a broad range of

civil society actors, with the Minister of Environment, the Ministry of Land Management, Urban Planning and Construction, diplomatic representatives and donors, and the United Nations Country Team. I regret that I was unable to meet with the Ministry of Agriculture, Forestry and Fisheries, especially given that they are the pre-eminent government entity involved with land concessions. Some supplementary information was submitted by the Ministries of Environment and Land Management, Urban Planning and Construction.

5. During my most recent mission, on 7 May 2012, the Prime Minister announced a Government initiative relating to economic land concessions, including the institution of a moratorium on the granting of new concessions and a review of the compliance of existing concessions with contractual and legal obligations of the concessionaires. He subsequently announced a rapid land titling initiative relating to people living near concessions. This report takes into account these recent developments and seeks to build on the positive aspects of these initiatives. The report analyses information that I have received from the beginning of my mandate in 2009 through the end of July 2012, including the domestic legal framework governing land rights (and law and policies related to protected areas), international developments related to Cambodia's human rights obligations involving land, and the impacts of economic and other land concessions on the enjoyment of human rights. The range of cases selected reflects these submissions. The report is based on official government data and information, analysis, individual petitions and testimonial evidence submitted by individuals, communities and local and international non-governmental organizations. The report also benefits from research done by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Cambodia, which is carrying out ongoing monitoring and advocacy related to this issue. While all my activities are carried out with the cooperation of the Government, it should be noted that the official documentation needed for a complete analysis was not forthcoming, and gaps in information exist.

II. Monitoring land concessions during the last two decades

6. A land concession is a contract between the Government and another actor that gives specific rights to control an area of land for a fixed period of time and for the conduct of specific activities in that area. For example, a concessionaire may be granted exclusive rights to manage, cultivate and harvest the land. Although concessions are often granted for long periods of time and concessionaires may be granted exclusive rights to use the land, a concession does not grant full ownership rights and the land remains the property of the State. Concerns about the impact of land concessions began in the 1990s when human rights organizations started to receive complaints about human rights violations on concession land. The human rights impacts of land concessions for agro-industry have been the subject of research by OHCHR and of reports by several successive Special Representatives of the Secretary-General for human rights in Cambodia¹ and, as noted, this report intends to draw on their work.

7. The first SRSG, Michael Kirby, visited a plantation concession in January 1996 in Rattanakiri province and expressed concern about the impact of agricultural concessions on the human rights and livelihoods of rural communities. In his subsequent report to the then Commission on Human Rights, he recommended that "the complaints of villages concerning non-consultation, the use of armed guards, the presentation for signature of an unexplained contract, the shooting of cows which wander onto concession areas and the

¹ For a historical overview of land concessions, see the 2004 SRSG Report, pp. 10-14.

feared endangerment of village survival and security of traditional sites of grave, pasture and farming land be resolved without delay, justly and according to the law.”²

8. Michael Kirby’s successor, Thomas Hammarberg, continued to examine the human rights impacts of agricultural and logging concessions on indigenous peoples, and he urged the Government, among other things, to officially recognize their use of land, forests and other natural resources, and their distinct and unique identity, culture and way of living, as well as the role of indigenous peoples in managing and preserving forests and biological diversity. He recommended that “villages, lands and forests used by the Highland Peoples be clearly mapped and preserved from any current and future commercial concession or similar use. Local commune forestry projects should be recognized and supported. Public and private projects should only take place after due consultation with the peoples affected, and social, environmental and cultural impact assessment studies have been carried out.”³ At this time the legal framework for granting and developing agricultural land concessions was very limited and there was little in the way of regulation for these types of concessions.⁴ This changed in 2001 when the new Land Law set out the basic conditions for granting what are now referred to as economic land concessions, or ELCs, which are concessions for agro-industry.⁵ The provisions of the 2001 Land Law were later elaborated by a sub-decree specifically dealing with ELCs.⁶

9. By the 2000s, Thomas Hammarberg’s successor, Peter Leuprecht, studied in-depth the impact of the economic land concession system from a human rights perspective, which was the subject of a 2004 report. The report explained the history and current practice of granting ELCs, including the early development of the concession system, and focused on the impacts on the human rights and livelihoods of local communities. The aim of the report was to contribute to public understanding of the issues and to help bring about changes in policy and practice to assist Cambodia’s rural poor and future generations. Leuprecht, expressing shock at the situation he witnessed, assessed that the “policies are wrong...companies have been given rights over land that are very similar to ownership, and yet they have little or no regard for the welfare of the people; and they contribute little to state revenue...They are not reducing poverty in Cambodia, and they are allowing the continued plundering of its natural resources.”⁷ He called for full disclosure of information concerning all concessions in Cambodia, including economic land concessions.

10. Subsequently, as the impact of economic land concessions and corresponding human right violations continued to affect more communities, Peter Leuprecht’s successor, Yash Ghai, further examined the problem with a focus on human rights violations committed by land concession companies against rural communities, especially indigenous peoples. The result of this work, the 2007 SRSG Report, provided an update on key developments since the 2004 SRSG Report, including the revised legal and regulatory framework for the granting and management of ELCs, and implementation of this framework. In the report’s introduction, SRSG Ghai noted that the impact of ELCs continued to mirror patterns documented in the 2004 SRSG Report, insofar as concessions had been detrimental to the livelihoods of rural communities. Communities had drawn little benefit from land concessions and had no effective remedy when their rights were violated. SRSG Ghai also underscored the recommendations of the 2004 SRSG Report, including a recommendation

² UN Doc., E/CN.4/1996/93, 26 February 1996, para. 84.

³ UN Doc., E/CN.4/1998/95, 20 February 1998, para. 153.

⁴ See the 2004 SRSG Report, pp.12-14.

⁵ Land Law, 2001, Chapter 5.

⁶ Sub-Decree No.146 ANK/BK on Economic Land Concessions, 27 December 2005.

⁷ 2004 SRSG Report, foreword.

that the entire ELC system be reconsidered, and that alternative models for agricultural development be pursued for the benefit of Cambodia's rural population.

11. Despite these and many other calls for re-examination and reform, the Government has continued to grant economic and other land concessions at an alarming rate. Over the last few years, increasing numbers of land concessions have been granted to private companies, both foreign and national, for large-scale agriculture, mining, infrastructure development, eco-tourism, and special economic zones.⁸ Many of these concessions are granted on land inhabited by indigenous communities, including protected areas and forests. Although the National Strategic Development Plan Update for 2009-2013 includes references to some challenges related to land concessions, including the need for more efficient use of resources, I am particularly concerned that I have not been able to obtain any comprehensive assessment of the impact of land concessions on Cambodia's population and natural resources undertaken by the Government. Moreover, the revenue generated from these concessions is not publicly disclosed in a way that permits comprehensive analysis and is therefore almost impossible to track.⁹

12. To fill the gap left by the absence of comprehensive official data and analysis, the field-based work of local NGOs has increasingly focused on monitoring of economic and other land concessions, supported by international donor resources. In particular, two leading Cambodian human rights organizations, Licadho and Adhoc, have been collecting data as they have monitored land conflicts over the last two decades. They have reported that more than two million hectares of land are currently leased as ELCs granted to more than 200 private companies, and just under two million hectares of land have been granted to mining companies for exploration of gold, iron ore, copper and other precious minerals.¹⁰

13. The lack of a public assessment by the Government on the impact of the concession system on local communities' human rights and livelihoods, the environment, and other human and economic costs of the concession system, together with a general lack of transparency surrounding concession activity, have been the subject of increasing discontent and protest. The result has been a general lack of trust by communities towards the authorities responsible for granting concessions, towards the local authorities and armed forces tasked with facilitating the implementation of concessions, and towards the implementing business enterprises who are often viewed as exploitative and exclusive.

⁸ Licadho and The Cambodia Daily (joint analysis), "Carving Up Cambodia: one concession at a time," The Cambodia Daily (issue number 730), 10-11 March 2012, available from <http://licadho-cambodia.org/land2012>.

⁹ At the time of writing this report, no comprehensive references were found on the Ministry of Economy and Finance and Council for the Development of Cambodia websites. Some revenue can be tracked on the Table of Government Financial Operation, or tableau d'opération financier d'état (TOFE), under the framework of Public Financial Management Reform. The disclosure of information is a part of the work plan committed by an Inter-ministerial Technical Working Group on mobilization and management of revenue from oil, gas and mining resources and consists of a regular report produced by the Ministry of Economy and Finance. See <http://www.mef.gov.kh/tofe.html>.

¹⁰ See Adhoc, *The Report of Land and Housing Rights 2011*, March 2012, which notes that as of 2011, the Government granted an estimated 2,276,349 hectares of ELCs to 225 companies. In 2001 alone, the Government granted 751,882 hectares of land to private companies for ELCs, and mining companies have received concessions to explore 1.9 million hectares. According to a Licadho map, a surface area of 3,936,481 hectares has been granted as mining concessions and ELCs, covering 22 percent of Cambodia's total surface area. Land concessions for agro-industrial crops total 2,036,170 hectares.

III. National framework – laws and procedures

14. There have been a number of legislative and policy developments since the 2007 SRSR Report that build on the relatively well-developed existing national legal framework for land management. Following is a summary of important legal provisions relating to the granting of concessions, as well as recent developments.

A. Land management: land classification and re-classification of state public land

15. Under the Land Law of 2001, there are two categories of state land: state public land and state private land. The distinction is important, as the classification of state land has an impact on how it may be utilized, and what type of development can be approved in a given area. According to Article 15 of the Land Law and the 2005 Sub-Decree on State Land Management, state public land has a public interest use, and includes natural resources such as forests, rivers, natural lakes, nature reserves protected by the law, and archaeological, cultural and historical patrimonies. State public land cannot be subject to sale or transfer, and cannot be the subject of an economic or social land concession (ELCs and SLCs, which are discussed more below).¹¹ The law is less clear about whether or not other types of concession can be granted on state public land, and by their very nature mining and hydropower projects are likely to be located on state public lands such as mountains and rivers. However, the law is clear that leases over state public land may not exceed 15 years, and any activity conducted on that land may not fundamentally alter the nature of the land or leave it in a state that its public interest value is lost.¹² However, state private property may be subject to lease, sale and transfer of rights.¹³

16. If state public land loses its public interest value, it may become state private land, which can be used for other purposes, including ELCs and SLCs, and can also be subject to long-term leases. State public land can only become state private land through formal re-classification in accordance with the “law on transferring of state public property to state private property”.¹⁴ Although the Land Law seems to require that a law be passed in order to govern the re-classification of state public land, it appears that this is currently being done in accordance with the process set out in a royal decree and sub-decree which were both issued in 2006.¹⁵

17. In 2005 the Sub-Decree on State Land Management was passed, which sets out the framework for state land identification, mapping, registration and classification, and includes provisions for the creation and maintenance of a state land database.¹⁶ The sub-decree also set out the process for re-classifying land that has already been registered as state public or state private property. The process requires that the re-classification request be considered by all relevant government agencies, and be posted in public in order to

¹¹ Land Law, 2001, article 15.

¹² Sub-Decree No.129 ANK/BK on the Rules and Procedures on Reclassification of State Public Properties and Public Entities, 27 November 2006, articles 18 and 16.

¹³ Land Law, 2001, article 17.

¹⁴ *Ibid.*, article 16.

¹⁵ A Sub-Decree (or Anukret in Khmer) is adopted by the Council of Ministers and signed by the Prime Minister. A sub-decree generally elaborates or implements a legal process already set out in existing law. A sub-decree must be in strict conformity with the Constitution and conform to the law to which it refers.

¹⁶ Sub-Decree No.118 HNK/BK on State Land Management, 7 October 2005.

gather comments from affected people and civil society. Any re-classification of state land must be done via a specific sub-decree.¹⁷

18. Less than one year later, in August 2006, a Royal Decree was issued by the King¹⁸ which had the stated aim to “determine the principles and transitional provisions involving transferring public properties of the state and legal public entities.”¹⁹ The Royal Decree requires that state public land may only be re-classified if certain conditions are met, principally that the land no longer serves the public interest, has lost its originally intended function, or is no longer used directly by the public.²⁰ Soon after the Royal Decree was issued, a separate sub-decree was signed by the Prime Minister which states that any re-classification of state public land must comply with the Royal Decree, but provides no more detailed procedure.²¹ It is not clear at this time if the Royal Decree and sub-decree of 2006 have the effect of over-ruling the provisions for re-classification contained in the earlier 2005 Sub-decree on State Land Management, but it should be noted that the later law contains much less detail and no provisions for disclosure or public comment.

19. In recent years there have been many examples of state public land being converted into state private land and subsequently granted to private companies for development purposes, discussed further below (section VI).

B. Laws and regulations governing land concessions

20. The Land Law of 2001 authorizes the granting of land concessions for either social or economic purposes. The Land Law also envisages “other kinds of concessions,” where authorization is granted for use, development or exploitation. This includes mining,²² fishing,²³ industrial development²⁴ and port concessions, but these types of concessions do not fall within the scope of the Land Law.²⁵

21. Land concessions can never be based on a de facto occupation of the land, rather they must be based on a specific legal document, issued by the competent authority prior to the occupation of the land, and must be registered with the Ministry of Land Management, Urban Planning and Construction (MLMUPC), who can issue a “certificate of long-term

¹⁷ Ibid., Chapter 5.

¹⁸ Royal Decree NS/RKT/0806/339 on Provisional Guidelines and Principles Regarding the Re-classification of State Public Properties and of Public Entities, 8 August 2006.

¹⁹ Ibid., article 1.

²⁰ Ibid., article 3.

²¹ Sub-Decree No.129 ANK/BK on the Rules and Procedures on Reclassification of State Public Properties and Public Entities, 27 November 2006, articles 40 and 41.

²² Covered by the Law on Mineral Resource Management and Exploitation, 2001.

²³ Covered by the Law on Fisheries, 2006.

²⁴ Law on Concessions, 2007, governs concession contracts in relation to infrastructure facilities in the following sectors: (a) power generation, power transmission and power distribution; (b) transportation facilities systems, including, but not limited to roads, bridges, airports, ports, railways, and channels; (c) water supply and sanitation; (d) telecommunication and information technology infrastructure; (e) supra-structure related to tourism projects, but not limited to tourism resorts and museums; (f) gas and oil related infrastructure including oil and gas pipelines; (g) sewerage, drainage and dredging; (h) waste management and treatment; (i) hospital and other infrastructure related to health, education and sport sectors; (j) infrastructure related to special economic zones and social housing; (k) irrigation and agricultural- related infrastructure; and (l) other sectors for which a specific law allows for the granting of concessions.

²⁵ Land Law, 2001, article 50.

lease” or “certificate of economic land concession.”²⁶ As described above, ELCs and SLCs can only be granted on private state land.²⁷

22. Social land concessions can be used to grant state private land to poor landless families for residential or farming purposes and to provide housing for veterans of the armed forces. They are regulated by the Sub-Decree on Social Land Concessions.²⁸ Economic land concessions are granted in order to clear land for industrial agricultural exploitation. The Sub-Decree on Economic Land Concessions adopted in December 2005 regulates the procedures for the granting of concessions and provides an important advance in establishing the legal and regulatory framework for the granting and management of such concessions, including requirements to conduct public consultations and environmental and social impact assessments (two of five fundamental criteria, listed in section III (C) 1.3).²⁹

23. Land concessions for economic purposes include tree plantations (such as rubber, palm oil, teak, eucalyptus, and coconut) and “agro-industry” (the large-scale production of food such as cassava, rice, corn and soybeans).³⁰ Under the Land Law, ELCs provide investors with exclusive rights to manage and harvest the land, but only create rights for use of the land during a fixed period of time, as set out in the concession contract.³¹ ELCs are granted in exchange for certain investments, fees and land rental.

24. ELC areas are limited by law to a maximum area of 10,000 hectares per person. The granting of land concessions on multiple areas in favour of one specific person or several legal entities controlled by the same person is prohibited (presumably to avoid monopolization of natural resources). The maximum duration for an ELC is 99 years.³² Previously, provincial and municipal governments had the power to grant ELCs of 1,000 hectares or less (per the 2005 sub-decree on ELCs), however, in 2008 this power was withdrawn by the central Government. ELCs may now be granted only by national institutions, regardless of the size of the concession.³³ The Government may revoke land concessions if the concessionaire does not comply with the terms of the concession contract.³⁴ Concessions are also subject to the Civil Code provisions relating to perpetual and long-term leases.³⁵

25. A Sub-Decree was issued in 2007 to determine the principles, terms and conditions for security and transfer of rights granted to investors with a long-term lease or an economic land concession.³⁶ The sub-decree gives concessionaires the right to transfer an ELC or to use it as security,³⁷ but a concessionaire may not transfer or mortgage their rights

²⁶ Land Law, 2001, article 53; Sub-decree No.114 ANK/BK on the Mortgage and Transfer of the Rights Over a Long -Term Lease or an Economic Land Concession, 29 August 2007, article 6.

²⁷ Land Law, 2001, article 58.

²⁸ Sub-Decree No.19 ANK/BK on Social Land Concessions, 19 March 2003, articles 2 and 3.

²⁹ Sub-Decree No.146 ANK/BK on Economic Land Concessions, 27 December 2005, articles 4(3) and 4(5).

³⁰ Some ELCs also include facilities for animal husbandry, see for example: Agro Star Investment in Kampong Cham (<http://www.elc.maff.gov.kh/en/profile/10-kcm/23-kcm-agrostar.html>).

³¹ Land Law, 2001, article 52.

³² Ibid., articles 59 and 61.

³³ Sub-Decree No.131 ANK/BK, on Modification of the Sub-decree on Economic Land Concessions, 15 September 2008.

³⁴ Land Law, 2001, article 55.

³⁵ Civil Code, article 307.

³⁶ Sub-Decree No.114 ANK/BK on the Mortgage and Transfer of the Rights over a Long-Term Lease or an Economic Land Concession, 29 August 2007.

³⁷ Ibid., article 1.

to the ELC if it has not been developed in accordance with the original ELC contract.³⁸ Presumably this provision exists to prevent land speculators acquiring and trading land through the land concession system. The sub-decree states that only land registered in the Master Land Register can be subject to a concession, unless the concession is approved by the Ministry of Economy and Finance together and the relevant ministers or heads of institutions, or provincial-municipal governors who are the trustee authorities of the land in question.³⁹ It also re-asserts that a concessionaire cannot become the owner of the land.⁴⁰

C. Update on the procedure for granting land concessions – the role of State actors

1.1. Ministry of Agriculture, Forestry and Fisheries

26. The Ministry of Agriculture, Forestry and Fisheries (MAFF) is the only body authorized to grant ELCs. According to the Sub-Decree on Economic Land Concessions, the procedure for the granting of ELCs may be initiated through solicited proposals, where the Government seeks expressions of interest in a project, or unsolicited proposals, where an investor proposes a project. However, competitive solicited proposals are the prioritized method for granting concessions, and unsolicited proposals may only be considered in exceptional cases where an investor promises to provide outstanding advantages through the introduction of new technology, contribute to social land concessions, or provide access to processing or export markets.⁴¹ ELCs should be granted only when all the following criteria have been met:⁴² the land has been registered and classified as state private land; a land use plan has been adopted by the provincial or municipal state land management committee, and the proposed land use is consistent with the plan; environmental and social impact assessments have been completed with respect to the land use and development plan; there are solutions for resettlement issues, in accordance with the existing legal framework and procedures; there shall be no involuntary resettlement by lawful land holders and access to private land shall be respected; and public consultations have been conducted with territorial authorities and local residents relating to the concession proposal.

27. The Sub-Decree on Economic Land Concessions also created a Technical Secretariat located at the MAFF with a mandate to support the authorities in reviewing existing ELCs, including: contractual compliance, land use fees and other revenue from contracts; public consultation to solicit comments on concession activities within communes where concessions are located; request for land regularization;⁴³ and request for the voluntary reduction of ELCs exceeding 10,000 hectares. The Technical Secretariat is also required to establish an ELC logbook.⁴⁴

³⁸ Ibid., article 3.

³⁹ Ibid., article 5.

⁴⁰ Ibid., article 4.

⁴¹ Sub-Decree No.146 ANK/BK on Economic Land Concessions, 27 December 2005, article 18.

⁴² Ibid., article 4.

⁴³ This is the responsibility of the MLMUPC, and includes land parcel adjustments, adjudication of land rights of the occupants of land parcels under review, and demarcation and registration of land through existing procedures. See Sub-Decree No.146 ANK/BK on Economic Land Concessions, 27 December 2005, article 42.

⁴⁴ Information was requested in writing from MAFF about the status of the logbook and the progress of the Technical Secretariat (including with regard to the review of existing ELCs, which ELCs exceed 10,000 hectares, and which ELCs are smaller than 1,000 hectares) but no response was received. Therefore, at the time of writing this report, official information on the progress of the logbook and

1.2. Ministry of Environment

28. The Ministry of the Environment (MoE) is responsible for developing environmental policies and implementing environmental action plans in collaboration with the other relevant ministries. It plays a key role in reviewing and advising the Government on the potential impact of investment projects. The ministry is also responsible for monitoring and investigating sources of pollution and enforcing the relevant provisions for punishing violations of Cambodia's pollution laws.⁴⁵

29. The MoE plays a key role in the approval of all major development projects, including the various types of land concessions. Specifically, the Law on Environmental Protection and Natural Resources Management states that all development projects, whether they are implemented by the state or a private entity, require an environmental impact assessment (EIA) to be conducted.⁴⁶ The Ministry is responsible for evaluating and reviewing EIAs, and ensuring their implementation. This includes ensuring adequate follow up, monitoring, and compliance by investors with a proposed Environmental Management Plan (EMP) during a project's construction, implementation, and closure.⁴⁷ The Sub-Decree on the Environmental Impact Assessment Process includes a list of all the types of projects that require an EIA, which includes wood and paper production, agriculture, mining, hydropower, power plants, tourism and infrastructure projects.⁴⁸ Other specific laws also confirm that an EIA must be conducted prior to a concession being approved.⁴⁹

30. The MoE is also responsible for managing Cambodia's protected areas.⁵⁰ As many development projects have been approved in areas that are located within or adjacent to protected areas, this role is crucial. As will be discussed later in this report, the MoE plays a central role in the process of designating areas within protected areas as sustainable use zones, which can open these areas for investment and development through concessions and other agreements. At the time of writing, it remains unclear exactly what process is being used to grant such concessions and who is ultimately assessing and approving them. A sub-decree issued by the Government in 2007 states that in cases where a long-term lease is approved by the Government over land that is unregistered, the contract should be signed by the relevant institutions who are trustees of that land, which could include the MoE when protected areas are concerned. However, it does not detail which authority is responsible for actually approving the lease, or what process should be followed.⁵¹ The Protected Areas Law also mandates the MoE to set up a National Committee for Conflict

the work of the Technical Secretariat is based on the MAFF website, which is current as of 2010 (with the exception of the table on ELCs that have been signed by MAFF, as of 8 June 2012).

⁴⁵ Sub-Decree No.57 ANK/BK on The Organization and Functioning of the Ministry of Environment, 25 September 1997, article 3.

⁴⁶ Law on Environmental Protection and Natural Resources Management, 1996, article 6.

⁴⁷ Sub-Decree No.72 ANK/BK on the Environmental Impact Assessment Process, 11 August 1999.

⁴⁸ *Ibid.*, annex.

⁴⁹ See for example, the Sub-decree on Economic Land Concessions, article 4(3); Law on Mineral Resource Management and Exploitation, article 21(2); and Forestry Law, article 4.

⁵⁰ Protected Areas Law, 2008, article 4; Royal Decree NS/RKT on the Establishment and Designation of Protected Areas, 1 November 1993.

⁵¹ Sub-Decree No.114 ANK/BK on the Mortgage and Transfer of the Rights over a Long-Term Lease or an Economic Land Concession, 29 August 2007, article 5 states that "Only immovable property registered in the Master Land Register can be subject of a concession or long-term lease. In case the lease is made with the Royal Government and the land is not titled, the lease shall be signed by the Minister of the Ministry of Economy and Finance together with relevant ministers or heads of institutions, or provincial-municipal governors who are the trustee authorities of the said land."

Resolution and Protected Area Management (NCRPAM) chaired by the Minister of Environment to resolve disputes arising from investment projects in protected areas.⁵²

1.3. Ministry of Economy and Finance

31. The Ministry of Economy and Finance (MEF) is mandated to assist the Government in guiding and administering the economy and in financial matters, including formulation of policy and management of investments, in order to support economic development and to improve the living standards of Cambodian people based on the principles of a free market economy and social equality. MEF also participates in the organization, implementation, and monitoring of the performance of economic and financial policies, monitors revenue from the national budget, and administers public property.⁵³ The MEF is authorized to sign land concession contracts together with relevant ministers, heads of institutions, or provincial-municipal governors who are the trustee authorities of untitled land, according to certain stipulations.⁵⁴

1.4. Ministry of Industry, Mines and Energy

32. The Ministry of Industry, Mines and Energy (MIME) is tasked with, among other duties, issuing mining licenses. According to the 2001 Law on Management and Exploitation of Mineral Resources, MIME is responsible for managing and inspecting all mining operations for compliance with the law.⁵⁵ There are six general types of mining licenses: Artisanal Mining Licenses,⁵⁶ Pit and Quarry Licenses, Gemstone Mining Licenses,⁵⁷ Mineral Transforming Licenses, and Exploration and Exploitation Licenses for Industrial Scale Mining.⁵⁸ In order to receive an Industrial Mining Licenses, the company must show that it is technically and financially able to implement the project. Applicants must also: conduct a feasibility study and complete an EIA; create a plan for protecting the health and safety of workers; create a plan for education, training and employment of Cambodian citizens; and prepare a plan for decommissioning (or closing down) the mine and restoring the surrounding affected environment after the mine closes.⁵⁹

⁵² Protected Areas Law, 2008, article 20.

⁵³ Sub-Decree No.04 ANK/BK on the Organization and Functioning of the Ministry of Economy and Finance, 20 January 2000.

⁵⁴ Sub-Decree No.114 ANK/BK on the Mortgage and Transfer of the Rights over a Long-Term Lease or an Economic Land Concession, 29 August 2007, article 5.

⁵⁵ Law on Management and Exploitation of Mineral Resources, 2001, article 15.

⁵⁶ Applications for artisanal mining licenses are processed through the local department of MIME in the area where the mining operation is located (article 14 of the Mining Law).

⁵⁷ A Pit and Quarry License gives a company the right to mine for construction materials which may include sand, gravel, crushed stone, laterite, cement, clay, limestone, and marble (article 11 (2) of the Mining Law). Permission to dredge sand from rivers and the sea is also granted through a Pit and Quarry License. A Gemstone License gives a company the right to mine for gems like diamonds, rubies, sapphires, and other gems. Both types of licenses cover exploration and exploitation, and also require an EIA to be conducted.

⁵⁸ For a company to mine valuable minerals, such as gold or bauxite at an industrial scale, two main licenses need to be obtained, the Exploration License (which gives a company the right to explore for minerals), and the Industrial Mining (or Exploitation) License (which gives a company the right to begin mining for precious minerals on an industrial scale). To apply for the Exploitation License, the company must first apply to the Council for the Development of Cambodia (CDC) which is the responsible body to review and approve major development projects. After approval from the CDC, MIME will subsequently issue the license.

⁵⁹ Law on Management and Exploitation of Mineral Resources, 2001, article 11(6) and 21.

1.5. Council for Development of Cambodia (CDC)

33. The Council for Development of Cambodia (CDC) was established by the 1994 Law on Investment, which designated the CDC as the highest authority on private and public sector investment in Cambodia.⁶⁰ It is chaired by the Prime Minister and composed of senior ministers from relevant government agencies.⁶¹ The Cambodian Investment Board and the Cambodian Special Economic Zone Board are the CDC's operational arms for private sector investment, dealing with investment projects within and outside of special economic zones, respectively. Both boards review investment applications, including for land concessions, and grant incentives to investment projects meeting the requirements laid out in the 1994 Investment Law. The sub-decree on the functioning of the CDC states that all investments worth over US\$50 million must be approved by the CDC, as must applications for exploration and exploitation of mineral and natural resources, projects with potential negative environmental impacts, and projects that involve infrastructure concessions.⁶² As such, the CDC plays an important role in promoting and approving investments in land concessions.

1.6. Ministry of Land Management, Urban Planning and Construction (MLMUPC)

34. The Land Law 2001 designated the Ministry of Land Management, Urban Planning and Construction as the entity responsible for issuing land titles and managing the cadastral administration of all types of land, including land belonging to the State, which includes state private land on which land concessions may be granted. The MLMUPC is responsible for land regularization when there is a request from the ELC Technical Secretariat. This includes land parcel adjustments, adjudication of land rights of occupants of land parcels under review, and demarcation and registration of land through existing procedures. The existence of land concessions or long-term leases should be recorded by the MLMUPC and certificates of long term-lease or certificates of economic land concession issued.⁶³ The Ministry has to date registered 18 ELCs, totalling approximately 101,000 hectares.⁶⁴

D. Interaction with other laws and regulations governing land concessions

1.1 Law on Protected Areas

35. In 1993 the Royal Decree on the Protection of Natural Areas established 23 protected areas. Subsequent sub-decrees have added additional sites to Cambodia's protected areas list and altered the size of the original 23 areas. At present there is no publicly available list of all protected areas and their boundaries. The 1993 Royal Decree

⁶⁰ Law on Investment, 1994, article 3, and Law on the Amendment to the Law on Investment, 2003.

⁶¹ Sub-Decree No.147 ANK/BK on the Organization and Functioning of the Council for Development of Cambodia, 29 December 2005, article 1.

⁶² *Ibid.*, article 11.

⁶³ Sub-Decree No.146 ANK/BK on Economic Land Concessions, 27 December 2005, article 4 (1) requires that prior to the granting of an economic land concession, the land should have been registered and classified as private state land in accordance with the Sub-Decree on State Land Management and Sub-Decree on Sporadic Registration. Article 2 of the Sub-Decree on Sporadic Land Registration tasks the MLMUPC's General Department of Cadastre and Geography with the overall coordination and supervision of the implementation of the Sub -Decree. See also Sub-Decree No.114 ANK/BK on the Mortgage and Transfer of the Rights over a Long-Term Lease or an Economic Land Concession, 29 August 2007, article 6.

⁶⁴ MLMUPC, Letter No. 556 DNS/GS-CLP to the Minister of Foreign Affairs and International Cooperation, in response to information request by Special Rapporteur relating to land concessions in Cambodia, 23 May 2012.

divides the protected areas into four distinct categories: natural parks, wildlife reserves, protected landscapes, and multi-purpose areas.

36. The Protected Areas Law came into force in January 2008 and defines the framework for the management, conservation and development of protected areas.⁶⁵ The original four categories of protected area were expanded and now include:⁶⁶ national parks,⁶⁷ wildlife sanctuaries,⁶⁸ protected landscapes,⁶⁹ multiple use areas,⁷⁰ Ramsar sites,⁷¹ biosphere reserves,⁷² natural heritage sites,⁷³ and marine parks,⁷⁴ which have been defined by previous regulations on national resource management and environmental protection.⁷⁵

⁶⁵ Protected Areas Law, 2008, article 1.

⁶⁶ Ibid., article 7.

⁶⁷ Natural parks are areas reserved for nature and for scenic views, and are to be protected for scientific, educational and entertainment purposes. They include: Botum Sakor (Koh Kong province, 171,250 hectares); Kirirom (Kampong Speu and Koh Kong provinces, 35,000 hectares); Bokor (Kampot province, 140,000 hectares); Kep (Kep province, 5,000 hectares); Ream (Kampong Som province, 171,250 hectares); Phnom Koulen (Siem Reap province, 37,500 hectares); and Virachey (Rattanakiri province, 332,500 hectares).

⁶⁸ Wildlife reserves are areas preserved to protect wildlife, vegetation and ecological balance. They include: Phnom Oral (Koh Kong, Pursat and Kampong Chhnang provinces, 253,750 hectares); Peam Krasop (Koh Kong province, 23,750 hectares); Phnom Samkos (Koh Kong province, 333,750 hectares); Roneam Donsam (Battambang province, 178,750 hectares); Koulen Prum Tep (Siem Reap and Preah Vihear provinces, 402,500 hectares); Beng Per (Kampong Thom province, 242,500 hectares); Lumphat (Rattanakiri and Mondulokiri provinces, 250,000 hectares); Phnom Prich (Mondulokiri and Kratie provinces, 222,500 hectares); Phnom Namlear (Mondulokiri province, 47,500 hectares); and Snuol (Kratie province, 75,000 hectares).

⁶⁹ Protected landscape areas are to be maintained as scenic spots for leisure and tourism. They include: Angkor (Siem Reap province, 10,800 hectares); Bantheay Chhmar (Bantheay Meanchey province, 81,200 hectares); and Preah Vihear (Preah Vihear province, 5,000 hectares).

⁷⁰ Multi-purpose areas are protected for the stability of water, forestry, wildlife, and fisheries resources, for pleasure, and for the conservation of nature with a view to assuring economic development. They include: Dung Peng (Koh Kong province, 27,700 hectares); Samlot (Battambang, 60,000 hectares); and Tonle Sap Biosphere (Kampong Chhnang, Kampong Thom, Siem Reap, Battambang and Pursat provinces, 316,250 hectares).

⁷¹ As per the 1971 Ramsar Convention (Convention on Wetlands of International Importance adopted in Ramsar, Iran), Ramsar sites are wetlands that are considered of ecological or biological importance, particularly those serving as habitats for threatened migratory water birds. For example, Tonle Sap and Boeung Chmar are inscribed on the list of Wetlands of International Importance (the "Ramsar List").

⁷² Biosphere reserves are areas representing important and not severely damaged ecosystems and surrounded by sustainable development zones, with the allowance of limited human activity. They are established to: 1) conserve biodiversity, landscape, land shape and ecosystems, including genetic resources, plant, fish and animal species, and restore the biological environment and habitat; 2) support sustainable ecological, environmental, economic, social and cultural development; and 3) support activities, including implementation of demonstration projects, training, research, and surveys to monitor the environmental changes, in relation to sustainable development and conservation at local, national, and international levels. For example, the Tonle Sap Biosphere Reserve was designated in 1997, covering a total area of 1,481,257 hectares and consisting of three core areas (70,837 hectares) and a buffer zone (510,768 hectares).

⁷³ Natural heritage sites are areas on land and/or water territories in which there is natural or semi-natural uniqueness that has extraordinary value, beauty or cultural importance. They are established to: 1) protect and maintain the sustainability of natural features because of their implicit natural importance, uniqueness and representation of the ecosystem; 2) provide opportunity for research, education, and public participation at a level that can ensure compatibility with the first point above; 3) eliminate and prevent use and occupation that are not in line with or cause harm to the objectives

37. The 2008 Protected Areas Law also introduced a new zoning system in order to effectively manage the conservation and development of protected areas.⁷⁶ The law states that protected areas should be divided into four distinct zones: core zones, conservation zones, sustainable use zones, and community zones. No clearance or building is allowed in the core or conservation zones, and any development within the sustainable use or community zones can only take place with the approval of the Government at the request of the Ministry of Environment.⁷⁷ Any development in these areas or in areas adjacent to protected areas must first be subject to an environmental and social impact assessment.⁷⁸ In recent years a large number of sub-decrees have been issued by the Government, with the approval of the MoE, designating land within protected areas as sustainable use zones and approving development projects therein, usually for agro-industry, discussed further (section IV (C)).

38. The Law sets conditions for the establishment or modification of any protected area and states that adjustments must be implemented by a specific sub-decree,⁷⁹ but modification of the boundaries of each zone can only be carried out on the basis of clear scientific information on the ecosystem which are subject to change or are under threat, and this must be in compliance with the policies and strategies of the Government.⁸⁰ The Ministry of Environment is charged with mapping protected areas with the participation of the MLMUPC, local authorities and communities, and relevant agencies.⁸¹

39. Chapter 6 of the law determines the involvement and access rights of local communities and indigenous communities, and affirms State recognition of the secure access to traditional uses, local customs, beliefs and religions of local communities and indigenous ethnic minority groups residing within and adjacent to protected areas. The law tasked the Ministry of Environment with the authority to allocate land to communities residing within or adjacent to a protected area as community protected area.⁸² As of the end of 2011, the Ministry of Environment had set up 102 community protected areas, which includes 23 indigenous communities.⁸³

of the establishment of the protected area; and 4) provide people who live in the natural heritage site (if any) with benefits at a level that can ensure compatibility with other management objectives.

⁷⁴ A marine park is a coastal area which is affected by marine tides mixed with water from mountain forests, including islands, covered by forests, plants, wildlife and fish of all kinds, with historical and cultural value. A marine park is established to: 1) maintain and protect marine biological resources and functions of forests; 2) maintain and protect the quality of marine environments for the long term; 3) maintain and protect historical sites and the value of cultural and natural privileges of the sea; 4) and provide opportunity for scientific research, education, recreation, and marine ecotourism.

⁷⁵ The protected areas were previously defined by the provisions of the 1996 Law on Environmental Protection and Natural Resources Management, the Royal Decree on the Establishment and Designation of Protected Areas, and the Royal Decree on the Establishment and Management of Boeung Tonle Sap Biosphere Reserve of 10 April 2001, among others.

⁷⁶ Protected Areas Law, 2008, Chapter 4.

⁷⁷ *Ibid.*, article 36.

⁷⁸ *Ibid.*, article 44.

⁷⁹ *Ibid.*, article 8.

⁸⁰ *Ibid.*, article 13.

⁸¹ *Ibid.*, article 14.

⁸² *Ibid.*, article 25.

⁸³ Information received during a meeting in May 2012 with the Minister of Environment. According to the Minister, of the 102 community protected areas, there are 197 villages with participation from 24,887 families. Out of the 102 communities, 23 communities or 4,449 families are made up of indigenous people.

1.2 Forestry Law

40. The Forestry Law authorizes the granting of forest concessions. However, since January 2002, a moratorium on logging in forest concessions has been in place⁸⁴ and the Prime Minister indicated in June 2012 that this will be continued.⁸⁵ The Sub-Decree on the Management of Forest Concessions states that cancelled or revoked forest concessions must revert to natural forest protected areas, and cannot be converted into ELCs or awarded to other companies. Article 29 of the Forestry Law prohibits the harvesting of trees that yield high-value resin or that local communities tap to extract resin for customary use. Chapter 9 of the law recognizes and ensures the traditional user rights of local communities to collect and use forest by-products. Traditional user rights include livestock grazing and the sale of forest by-products. Chapter 9 also enables the allocation of any part of a permanent forest reserve as a community forest, granting communities living inside or near the forest rights to manage and utilize the forest resources in a sustainable manner. As of December 2011, a total of 281 community forestry sites covering 244,265 hectares of forest land area in 18 provinces were recognized by the prakas of the Ministry of Agriculture, Forestry and Fisheries.⁸⁶

1.3 Laws on Environment

41. The 1996 Law on Environmental Protection and Natural Resource Management requires environmental impact assessments to be carried out on all private and public projects and activities.⁸⁷ Concerned ministries should consult with the Ministry of Environment before issuing a decision or undertaking activities related to the preservation, development or management of natural resources.⁸⁸ The Ministry of Environment, in collaboration with the concerned ministries, must also carry out a study to assess the environmental impacts on natural resources and present recommendations to ensure that natural resources are preserved, developed and managed in a sustainable manner.⁸⁹

42. The 1999 Sub-Decree on the Environmental Impact Assessment Process further specifies the procedures for an assessment which is to be undertaken on every project or activity of any type or size, public or private, and should involve consultations with affected communities.⁹⁰ It empowers the Ministry of Environment to evaluate and review assessments and ensure their implementation through monitoring and surveillance.⁹¹ Article 4 of the sub-decree specifies that projects can only be approved by national institutions following a review of findings and recommendations provided by the MoE based on the impact assessments. At the time of writing this report, the Ministry of Environment was in the process of drafting a law on environmental impact assessments, the contents of which

⁸⁴ In January 2002 the Prime Minister announced a moratorium on logging, in line with the Statement of the Royal Government on the National Forestry Sector Policy from 26 July 2002, <http://www.forestry.gov.kh/Law/ForestPolicy.html>.

⁸⁵ Speech given by the Prime Minister, 14 June 2012, at the launch of the 2011 mid-term review report on the implementation of the National Strategic Development Plan Update (2009-2013).

⁸⁶ Community Forestry Agreements, Kingdom of Cambodia, Forestry Administration, January 2012; Community Forestry Statistics in Cambodia, 2011.

⁸⁷ Law on Environmental Protection and Natural Resource Management, 1996, articles 6 and 7.

⁸⁸ *Ibid.*, article 10.

⁸⁹ *Ibid.*, article 9.

⁹⁰ Sub-decree No.72 ANK/BK on the Environmental Impact Process, 11 August 1999, article 1, states that impact assessments should “Foster public participation in the environmental impact assessment process in recognition that their concerns should be considered in the project decision-making process.”

⁹¹ *Ibid.*, article 3.

had not yet been made available to the public, but which were reportedly slated for a consultation process in the future.

1.4 Law on Investment

43. The Cambodian Law on Investment applies to all Qualified Investment Projects (QIP), a QIP being any project which has received a final registration certificate from the CDC.⁹² The Law streamlined the foreign investment regime and provided the framework for incentives (including exemption of custom duties and taxes) for direct private sector investment, including in agro-industry, infrastructure development, environmental protection, and tourism.⁹³ Chapter 6 specifies that the use of land is permitted to all investors, although land ownership is restricted to Cambodian nationals, which is in line with Cambodia's Constitution and Land Law. All investors are permitted to enter into unlimited, short-term and long-term leases, subject to the provisions of existing laws governing such leases, although the law specifies that concession holders cannot hold onto or transfer land concessions that are inactive. Chapter 8 of the law states that any dispute relating to investment should first be settled amicably through consultation between the concerned parties and the CDC. Should this not be possible within two months, the dispute should be brought by either party for conciliation before the Council, sent for arbitration or referred to the courts. However, this does not apply to land disputes, which should be resolved according to existing legal provisions contained in the Land Law and/or Civil Code.

1.5 Laws pertaining to extractive industries

44. The 2001 Law on Management and Exploitation of Mineral Resources governs the prospecting, exploration and exploitation of mineral resources (although the law does not cover petroleum and gas). Mining is prohibited on "national cultural, historical and heritage sites," and any mining activities in "protected, reserved or restricted" areas can only be carried out with written permission of the authority responsible for managing that area.⁹⁴ The Law also specifies requirements for addressing environmental impact and providing fair and just compensation to private land holders whose property is affected.⁹⁵ The 2002 Law on Forestry allows mining within Permanent Forest Estates, however, any proposed mining operation, in addition to following other relevant laws, must be the subject of a "prior study-evaluation" by the MAFF.⁹⁶ A draft mineral policy is reportedly under development.

⁹² Cambodian Law on Investment, 1994 (as amended by the Law on the Amendment to the Law on Investment, 2003), article 1.

⁹³ *Ibid.*, articles 12-14.

⁹⁴ Law on Management and Exploitation of Mineral Resources, 2001, articles 7 and 8.

⁹⁵ *Ibid.*, articles 7 and 25. The Mining Law also set certain requirements for every license holder or subcontractor to take responsibility for the proper conduct of exploration and mining operations, including: the protection of the environment in accordance with the Law on Environment Protection and Natural Resource Management; an environmental impact assessment and study; an environmental management plan; a mine site restoration and rehabilitation plan and financial guarantees; ensuring the protection of worker health and safety to be detailed in a mine plan program; a mine health and safety program containing accident prevention and reporting procedures; protecting safety of the public in and around mine sites to be detailed in a mine plan; educating, training and providing jobs to Khmer citizens to be detailed in an education, training and employment program; and utilizing as much as possible goods and services within the Kingdom of Cambodia (article 21).

⁹⁶ Law on Forestry, 2002, article 35.

45. The oil and gas sector is currently governed by the Petroleum Regulations from 1991 and their 1998 and 1999 amendments.⁹⁷ Under the original Regulations, MIME was the administrative authority responsible for the management of petroleum resources. However, in 1998 this authority was transferred to the Cambodian National Petroleum Authority (CNPA),⁹⁸ which is now responsible for evaluating bids and making recommendations to the Government that Petroleum Agreements be granted to specific companies.⁹⁹ There is currently no specific law covering petroleum and gas. A law is reportedly being drafted by the CNPA and Council for Jurists, but at the time of writing the draft was not publicly available and to date there has been no public review or consultation. In addition, there are reportedly inter-ministerial consultations on a draft policy on petroleum.

46. The Petroleum Regulations set out the terms for invitations to bid and the criteria for evaluating, negotiating and approving subsequent bids. Exploration periods are granted for up to 4 years, after which they may be renewed twice for a period of two years each time.¹⁰⁰ If exploration shows that resources can be commercially exploited, the company should apply for a production permit including a detailed work plan and budget for the proposed exploitation. No further development of operations should commence until a production permit is issued. According to the Regulations, the production period lasts for 30 years, after which it may be extended for a further five years if the field is still commercially productive.¹⁰¹ The Regulations set out requirements for petroleum operations, including protections for safety, security and the environment.¹⁰² As with all major development projects, a full EIA is required for all petroleum and gas operations.¹⁰³

1.6 Laws related to hydropower

47. There is currently no specific law for hydropower in Cambodia, although there are a number of laws with relevance to the development and running of such projects, including the laws related to investment, electricity, land, forests, water resources and the environment. As Cambodia does not yet have the financial or technical capacities to design, construct and operate large-scale hydropower projects, all large-scale projects currently under development are reportedly under Build Operate Transfer (BOT) agreements of 25 years and upward, and all the existing large-scale hydropower projects currently operational or in development are reportedly Chinese funded and operated.¹⁰⁴

48. The first step in developing a hydro-power project is to seek a Memorandum of Understanding with MIME in order to conduct and prepare a feasibility study, followed by steps to develop the project, which must be approved by the Council for the Development of Cambodia. In addition, under the 2007 Law on Water Resource Management, all

⁹⁷ For the current status of the petroleum law and the amendments to the 1991 Petroleum Regulations, see Cambodia National Petroleum Authority, http://www.cnpa.gov.kh/index.php?option=com_content&view=article&id=66&Itemid=142.

⁹⁸ The current chair of the CNPA is H.E. Sok An, Deputy Prime Minister and Chair of the Council of Ministers.

⁹⁹ Royal Decree CS/RTK/0198/020 22 on the Formation of the Cambodia National Petroleum Authority, January 1998.

¹⁰⁰ Petroleum Regulations, 1991, Chapter 4.

¹⁰¹ *Ibid.*, Chapter 5.

¹⁰² *Ibid.*, Chapter 6.

¹⁰³ Law on Environmental Protection and Natural Resource Management, 1996, article 6; Sub-Decree on the Environmental Impact Assessments Process, 1999.

¹⁰⁴ Open Development Cambodia, Briefing on Hydropower, October 2011, <http://www.opendevdevelopmentcambodia.net/briefings/hydropower>.

hydropower projects require a water use license.¹⁰⁵ As with all large-scale development projects, all hydropower projects must be subject to an EIA prior to approval, and EIAs should be conducted according to the procedures set out by the Ministry of Environment.¹⁰⁶

E. Land title and possession rights

49. The Khmer Rouge regime which ruled Cambodia between 1975 and 1979 saw the dissolution of all private ownership, the results of which are still being felt today. Many millions of Cambodians still lack documentation and the full recognition of their ownership rights that comes with a land title. In recognition of the absence of widespread land registration and titling, Chapter 4 of the Land Law recognises the possession rights of those people who have enjoyed peaceful, uncontested possession of their land commencing prior to the 2001 Land Law, but are not yet formally recognized as owners of the land. If an occupant can prove that they have legitimate possession rights they are entitled to request a land title for their land and thus have their possession converted into full ownership rights.¹⁰⁷

50. The Ministry of Land Management, Urban Planning and Construction, with the support of development partners and other authorities, has made significant progress in both systematic and sporadic land registration and titling programmes and has made efforts to try and address the situation of informal settlers through new policies and regulations.¹⁰⁸ Foreign donors including the World Bank, the Government of Germany (through the Deutsche Gesellschaft für Internationale Zusammenarbeit, GIZ—formally GTZ and DED), the Government of Finland (through Finnmap), the Government of Canada (through the Canadian International Development Agency), as well as the Government of Denmark (Danida) and the European Commission, have contributed significantly to these programmes in both urban and rural areas through financial and technical assistance to support the MLMUPC and provincial authorities in a number of land policy, allocation, registration and titling programmes. The key programmes include the Land Management and Administration Project (LMAP), a systematic and sporadic titling programme from 2002-2009; the Land Allocation for Social and Economic Development (LASED) project, supporting the redistribution of land for the poor and landless through a social land concession pilot; and the Land Administration Sub Sector Programme (LASSP), which is the successor to LMAP.

51. According to the National Strategic Development Plan Update, as of 2010, a total of 1,664,297 land titles had been issued, of which three quarters related to rural areas and one quarter to urban areas. Of these, 1,070,665 titles were issued through systematic land titling processes and 593,645 through sporadic titling.¹⁰⁹ As of November 2011, the land titling programme had delivered 1,740,839 land titles, although the programme is ongoing and the number is now likely higher.¹¹⁰ While significant progress has been made, there

¹⁰⁵ Law on Water Resource Management, 2007, article 12.

¹⁰⁶ Law on Environmental Protection and Natural Resource Management, 1996, article 6; Sub-Decree on the Environmental Impact Assessments Process, 1999.

¹⁰⁷ Land Law, 2001, article 30. Article 38 of the law sets out the conditions for recognition of these rights, namely that the possession shall “be unambiguous, non-violent, notorious to the public, continuous and in good faith.”

¹⁰⁸ For example, note the adoption of the Circular on Resolution of Temporary Settlements on Illegally Occupied Land in the Capital, Municipal and Urban Areas (Circular 03) in May 2010.

¹⁰⁹ Royal Government of Cambodia, National Strategic Development Plan Update (2009-2013), Chapter 2, page 34, para. 111.

¹¹⁰ LASSP, *Land is Life: Land Administration Sub-Sector Program Newsletter*, Issue 2, November 2011.

have been concerns about households and communities excluded from these programmes, as discussed below. Further, a new accelerated land titling scheme was initiated by the Prime Minister in June 2012, and is being implemented rapidly by the MLMUPC with the assistance of cadastral officials at the provincial level and a cadre of youth recruited specifically for this purpose, which is also discussed in further detail below.

F. The rights of indigenous peoples to land

52. Chapter 3 of the 2001 Land Law recognizes the rights of indigenous peoples to collective ownership of their lands. The lands of indigenous communities include residential and agricultural land, and encompass both land currently cultivated and land reserved for shifting agriculture. Article 23 of the Land Law states that indigenous communities should continue to manage their communities and land according to traditional customs, pending the determination of their legal status. Once they are registered with the Ministry of Interior as legal entities, communities can apply for registration of collective land title. In 2009, the Government further defined its policy on indigenous peoples¹¹¹ and developed the procedures to implement their rights to collective land title.¹¹²

53. The adoption of the sub-decree on indigenous land registration in April 2009 set in motion various initiatives by the Ministry of the Interior, Ministry of Rural Development, MLMUPC, bilateral donors, United Nations, and NGOs to assist indigenous communities seeking to register as legal entities and apply for collective land title. The sub-decree sets out the procedure for the communal land titling of indigenous lands and includes detailed steps for boundary demarcation, surveying, and public display.

54. Despite the efforts of indigenous communities to register as legal entities and eventually apply for land title, economic land concessions continue to be granted on lands also claimed by communities. However, in May 2011 the Ministry of Interior and MLMUPC issued a welcome Inter-ministerial Circular that provides interim protective measures for indigenous peoples registered with the Ministry of the Interior. The goal of the circular is to protect the lands of indigenous peoples who are awaiting the lengthy process of collective land titling to be completed.¹¹³

G. Brief overview of available land dispute resolution mechanisms

55. There are five formal conflict resolution mechanisms in Cambodia for disputes relating to land rights: the Commune Councils, the Administrative Committees, the Cadastral Commission, the National Authority for Land Conflict Resolution (NALDR), and the court system. The Commune Councils only “reconcile differences of opinion” among

¹¹¹ National Policy on the Development of Indigenous People prepared by the Ministry of Rural Development, approved by the Council of Ministers, 24 April 2009; Circular of the Ministry of Rural Development on the Procedures and Methods of Implementing National Policy on the Development and Identification of an Indigenous Community, 22 July 2009.

¹¹² Sub-Decree No.83 ANK/BK on Procedures of Registration of Land of Indigenous Communities, 24 April 2009.

¹¹³ Ministry of Interior and MLMUPC, Inter-ministerial Circular on Interim Protective Measures Protecting Lands of Indigenous Peoples that Has Been Requested for Collective Ownership Titling, While Awaiting Titling Process According to Procedure to be Completed, 31 May 2011.

citizens of communes, but do not make decisions.¹¹⁴ Though not a requirement, in practice most cases go to the Commune Councils before they go to higher levels.

56. Administrative Committees (AC) are established in all areas that are undergoing systematic land registration, and are the first instance of dispute resolution in cases where disputes arise during the land registration process. The ACs have no power to issue a decision and may only seek to assist the conflicting parties to resolve their dispute.¹¹⁵ If the AC is unable to resolve a dispute it should be forwarded to the Cadastral Commission.

57. The Land Law of 2001 requires that disputes over unregistered land be submitted for investigation and resolution by the Cadastral Commission,¹¹⁶ which was formally established in May 2002 by a sub decree.¹¹⁷ The Cadastral Commission is responsible for resolving disputes over unregistered lands occurring outside of areas being adjudicated for systematic land registration, as well as disputes that emerge during adjudication that cannot be resolved by Administrative Committees.¹¹⁸ The Cadastral Commissions consist of the National Cadastral Commission, Provincial/Municipal Cadastral Commissions in all 24 provinces and municipalities and District/Khan Cadastral Commissions in all 194 districts/khans. The District/Khan Cadastral Commission only has authority to support reconciliation, and in the case where no agreement is reached, it will be referred to the provincial level. Previously the Provincial Cadastral Commissions only had powers to conciliate disputes,¹¹⁹ but in late 2009 they were delegated power to issue decisions in cases where conciliation is not possible.¹²⁰ If a case can still not be resolved at the provincial level it should be forwarded to the National Cadastral Commission, which has the power to issue a decision.¹²¹ In the case of dissatisfaction with the result, the disputants may complain to the court within 30 days.¹²²

58. The Cadastral Commission has no jurisdiction over land disputes concerning registered land, which must be heard by the courts. Any disputes concerning a contractual or inheritance dispute must also be referred to the courts, regardless of whether the land is registered or not.¹²³

59. In February 2006, the National Authority on Land Dispute Resolution was set up by a Royal Decree.¹²⁴ This institution, which was not envisaged when the Land Law was

¹¹⁴ Sub -Decree No.22 ANK/BK on the Decentralization of Power, Roles and Duties to the Commune/Sangkat Councils, 25 March 2002, article 61.

¹¹⁵ The make-up and role of the Administrative Committees are set out in Sub-Decree No.46 ANK/BK on Procedures to Establish Cadastral Index Map and Land Register, 31 May 2002.

¹¹⁶ Land Law, 2001, article 47.

¹¹⁷ Sub-Decree No.47 ANK/BK on the Organization and Functioning of the Cadastral Commission, 31 May 2002, articles 2 and 3.

¹¹⁸ *Ibid.*, article 3.

¹¹⁹ *Ibid.*, article 13.

¹²⁰ MLMUPC Prakas No.32 on Delegation of Power to Governors of Provincial-Municipal Boards, Chairmen of PMCC to Decide Land Disputes in the CC Mechanism, 21 January 2010; MLMUPC Circular No.1 on Implementation of Procedures for Deciding Land Disputes at Provincial/Municipal Cadastral Commissions, 21 January 2011.

¹²¹ Sub-Decree No.47 ANK/BK on the Organization and Functioning of the Cadastral Commission, 31 May 2002, article 19.

¹²² *Ibid.*, articles 2 and 3.

¹²³ Ministry of Justice and MLMUPC, Joint Prakas No.3 on Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes, 26 November 2003, articles 1 and 4.

¹²⁴ Royal Decree NS/RKT/0206/097, 26 February 2006, determined that the composition of NALDR consisted of a representative of the Prime Minister as chair, the Minister of MLMUPC as first vice chair, with members from all of the other major ministries, and representatives from the police and military forces, amongst others. Subsequently, in March 2006, a sub-decree was issued by the Royal

drafted, does not have a clear place within the existing institutional framework for land dispute resolution. It is mandated to hear cases which are “beyond the competence of the National Cadastral Commission” and receive “complaints from everywhere involving land disputes.”¹²⁵ Little information is available about the functioning of this body, and it is not known how many cases it has received and resolved.

H. Recent changes in law and policy

60. The Prime Minister instigated a number of policy developments related to ELCs in the first half of 2012. In March 2012, the Council of Ministers decided that in principle, prior to the signing of all ELC contracts, the Ministry of Land Management should register state land in the Land Registry Book following the procedures in the legal framework already in force. According to a letter from the Council of Ministers the MLMUPC, MoE, MAFF and Ministry of Commerce agreed that, before signing any ELC contract, the land in question should be registered and entered into the Land Register, a process which takes 4-5 months to complete.¹²⁶

61. On 7 May 2012, the Prime Minister issued a directive to temporarily halt the granting of ELCs, which also called for a review of existing concessions.¹²⁷ For existing ELCs, the directive instructs relevant authorities to further implement a “leopard-skin” policy, demarcating ELCs around land already occupied, thereby aiming to lessen the effects of ELCs on communal land and decrease interruptions to the livelihood of rural communities. The directive also stated that ELCs would be cancelled for those companies that fail to comply with applicable procedures and contracts, and who conduct illegal logging, encroach on land outside of the ELC, and leave the land vacant for resale. On 14 June 2012, the Prime Minister gave a speech during the launch of the 2011 mid-term review report on the implementation of the National Strategic Development Plan Update where he reinforced the intention to implement the “leopard skin” policy through a new land titling scheme for families living within ELC areas.

62. On 9 July 2012, the Government informed me in writing that the Prime Minister had instructed authorities on 14 July 2012 to expedite the issuance of land titles to 350,000 families nationwide living within existing ELCs, forest concessions, and state land, in order to demarcate a total land area of 1.2 million hectares. I was informed that the implementation of this new initiative was already well underway, following the recruitment of 1,500 youth, and that 1,100 youth had already been deployed to Battambang, Banteay Meanchey, Kampong Cham, Kampong Chhnang, Kampong Speu, Kampong Thom, Kampot, Kratie, Mondulakiri, Rattanakiri, Steung Treng and Preah Vihear provinces on 28

Government to appoint officials to the positions stated in the Royal Decree. The NALDR is a council of 25 high ranking officials, the majority of whom are from the Government, including representatives from the National Assembly, as well as government lawyers. NGOs were invited to nominate a representative, but declined to do so. The Authority is chaired by Deputy Prime Minister Sok An; vice chairs include the Minister for Land Management (H.E Im Chhun Lim), the Minister for Minister of National Assembly and Senate Relations and Inspectorate Affairs (H.E. Men Sam On), and a member of the opposition (H.E. Eng Chay Eang). The Royal Decree creating the NALDR also creates a general secretariat which is effectively its implementing agency.

¹²⁵ Determination on Rules and Procedure of Work of NALDR, 11 December 2008.

¹²⁶ Council of Ministers, Letter No.298 SCN.OS, 19 March 2012.

¹²⁷ Royal Government of Cambodia, Directive No.01 Bor/Bor on the Measures to Strengthen and Foster Effectiveness for the Management of ELCs, 7 May 2012.

June 2012. I was also informed that another group of 420 youth would be deployed in mid-July 2012 to Oddar Meanchey, Koh Kong, Pursat and Siem Reap provinces.¹²⁸

63. Following the 14 June 2012 speech, various official documents were published relating to the new scheme's implementation, including the Government's decision of 25 June 2012 to establish a committee to oversee the implementation of the directive. This committee is to report back to the Prime Minister in order to make requests for a decision on any proposal to excise land from forest concessions, ELCs, and state land, and to distribute the excised land to the people so that they can legally own the land.¹²⁹ While the May 2012 ELC directive represents a significant step in the right direction in terms of land reform and may achieve a great deal in terms of distributing land to the rural poor, its implementation has raised concerns in terms of harmonization with the existing laws, procedures and policies on land titling and management. This is discussed in further detail below.

I. Pending draft laws and regulations

64. In early 2010, the MLMUPC released a draft housing policy that, among other safeguards, offers protections against forced eviction. At the time of the writing of this report the policy was still awaiting finalization by the Council for Land Policy and approval by the Council of Ministers. The Ministry also released a draft sub-decree on urbanization at the end of 2011 and detailed input into the draft was offered by a range of interlocutors during a process of open consultation, but an updated draft was not in circulation at the time of writing.

65. In November 2011 the MAFF held a meeting on a proposed draft law on the management and use of agricultural land, but various stakeholders have reported a closed consultation process and several potentially problematic elements that could undermine the current legislative framework governing land, including the 2001 Land Law. Development partners report that the current draft available could have serious implications for landholders and farming practices due to the imposition of new agricultural development areas. Moreover, the draft introduces criminal penalties for any person in contravention of the proposed system for management and use of agricultural land. It would also allow the transfer of land to or from economic and social land concessions, which could be problematic for some landholders.

IV. International legal framework

A. Developments in the international human rights system pertaining to Cambodia's State obligations

66. Article 31 of the 1993 Constitution of the Kingdom of Cambodia enshrines international human rights obligations into domestic law and policy.¹³⁰ The direct

¹²⁸ Letter from Secretary of State of the Ministry of Foreign Affairs and International Cooperation, Ouch Borith, to Surya Subedi, 9 July 2012.

¹²⁹ Government Decision No.24 Sor.Sor.Ro, 25 June 2012.

¹³⁰ Constitution of the Kingdom of Cambodia, article 31: "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights."

applicability of international human rights norms in Cambodian courts was further confirmed by a decision of the Constitutional Council in 2007.¹³¹ Since 2007 there have been a number of developments related to land concessions at the international level which are relevant to Cambodia's international commitments and the development of its national laws, policy and practices.

67. In September 2007, Cambodia voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),¹³² which provides an international normative foundation for the Government's legal framework on the recognition and registration of indigenous peoples and their right to own, use and develop their traditional collective lands and to have traditional land tenure systems recognized. The adoption of the Declaration represents the culmination of decades of advocacy for indigenous peoples' rights and lays out explicitly the rights to land, culture, livelihood and consultation.¹³³

68. The Basic Principles and Guidelines on the right to Development-based Displacement and Evictions of 2007 developed by the Special Rapporteur on adequate housing provide a baseline standard related to relocation of people affected by land concessions.¹³⁴ The Guidelines recommend States explore all possible alternatives to evictions and ensure full consultation and participation of affected communities throughout the entire process, as well as to provide adequate compensation and restitution to those who are relocated or lose land.¹³⁵

69. The Minimum Human Rights Principles Applicable to Large-scale Land Acquisitions or Leases developed by the Special Rapporteur on the right to food are also particularly relevant in this context.¹³⁶ The main aim of the Principles is to ensure that negotiations leading to land acquisitions and leases comply with a number of procedural

¹³¹ Decision No. 092/003/2007, 10 July 2007.

¹³² General Assembly Resolution 61/295, 13 September 2007.

¹³³ The Declaration recognises the right of indigenous peoples to self-determination (art.1) – i.e. to freely pursue their economic, social and cultural development, the right to be protected against forced evictions (art.10), the right to be protected against forced assimilation or destruction of their culture (art.10) and, interrelated, the right to maintain and protect their cultural traditions and customs (art.11), spiritual and religious traditions (art.12) and to exercise their spiritual and traditional relationship with the land (art. 25); and more explicitly their right to land (art. 26). Articles 19 and 32 highlight the need for States to consult with indigenous peoples and to obtain their free, prior and informed consent prior to adopting legislative or administrative measures or projects which may affect the enjoyment of their rights, in particular “projects affecting their lands or territories and other resources.” Article 29 underscores indigenous peoples' right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. Finally, the Declaration also emphasizes indigenous peoples' right to obtain redress if they are deprived of their means of subsistence and development (art. 20, 28, 32, 40). See also, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, A/HRC/9/9, 11 August 2008.

¹³⁴ Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18.

¹³⁵ The Office of the United Nations High Commissioner for Human Rights in Cambodia published in December 2009 the “United Nations Commentary and Guidelines on Eviction and Resettlement” in both English and Khmer, available at: <http://cambodia.ohchr.org/WebDOCs/DocPublications/EvictionsGuidelines/EvictionGuidelines-EN.pdf> and <http://cambodia.ohchr.org/WebDOCs/DocPublications/EvictionsGuidelines/EvictionGuidelines-Kh.pdf>.

¹³⁶ Minimum Human Rights Principles Applicable to Large-scale Land Acquisitions or Leases, annexed in the Report of the Special Rapporteur on the right to food, A/HRC/13/33/Add.2, 28 December 2009.

requirements, including the informed participation of local communities. They also seek to ensure adequate benefit-sharing and include a proviso that under no circumstances should such transactions be allowed to trump the human rights obligations of States.

70. In 2009, at the conclusion of its first Universal Periodic Review by the United Nations Human Rights Council, the Government of Cambodia accepted all 91 recommendations made by member States.¹³⁷ Among these, several specific recommendations were made regarding land issues, such as the need to: implement judicial reform to address land issues; intensify efforts to promote fair access to land ownership and prevent forced evictions, if not execute a moratorium; and revise policies and practices related to resettlement and relocation.¹³⁸ Furthermore, in 2009 the Human Rights Council in its resolution 12/25 on advisory services and technical assistance for Cambodia, following on previous resolutions, urged the Government “to enhance its efforts to resolve equitably and expeditiously land ownership issues in a fair and open manner, in accordance with the 2001 Land Law, by strengthening the implementation of the law through the development of national guidelines to clarify relevant procedures, as well as by strengthening the capacity and effectiveness of relevant institutions, such as the National Authority for Land-Dispute Resolution and cadastral committees at the national, provincial and district levels.”¹³⁹ These sentiments were echoed in the Human Rights Council’s 2011 resolution.¹⁴⁰

71. In its 2010 concluding observations, the Committee on the Elimination of Racial Discrimination (CERD) expressed concerns “about reports of the rapid granting of concessions of land traditionally occupied by indigenous peoples without full consideration, or exhaustion of procedures provided for, under the land law and relevant sub-decrees (arts. 2 and 5)” and recommended that the Government adopt protective measures (such as granting delays when issuing land concessions).¹⁴¹ The Committee also expressed concern over intimidation and acts of violence against indigenous peoples during forced evictions or land disputes affecting them, and recommended the Government provide full protection against physical attacks and intimidation as communities seek to exercise their rights to claim communal land.¹⁴²

¹³⁷ Human Rights Council, Report of the Human Rights Council at its 13th Session, A/HRC/13/56, 8 February 2011, para. 355-369.

¹³⁸ Human Rights Council, Report of the Working Group on the Universal Periodic Review on Cambodia, A/HRC/13/4, 4 January 2010, Recommendations 38, 60, 61, 62, 63, 64, 65, 66, 67 and 68.

¹³⁹ Human Rights Council resolution 12/25, A/HRC/12/L.18, 28 September 2009, para. 5(d).

¹⁴⁰ Human Rights Council resolution A/HRC/18/L.25, 26 September 2011, para. 5(e).

¹⁴¹ Committee on the Elimination of Racial Discrimination, Concluding Observations: Cambodia, CERD/C/KHM/CO/8-13, 1 April 2010, para. 16: “The Committee recommends that the State party ensure that a proper balance between development and the rights of its citizens is achieved and that its economic development does not come at the expense of the rights of vulnerable persons and groups covered by the Convention. It also recommends that the State party develop appropriate protective measures, such as a delay in the issuance of a concession on lands inhabited by indigenous communities who have applied to be registered legally in order to obtain land titles until the issue of collective ownership titles and indigenous peoples’ rights to possess, develop, control and use their communal lands, where at issue, has been assessed and determined, and after consultation with and the informed consent of the indigenous peoples.”

¹⁴² *Ibid.*, para. 17. “The Committee urges the State party to provide full protection to vulnerable groups against physical attacks and intimidation as they seek to exercise their rights as they relate to communal lands. It urges the State party to bring perpetrators of such violations to justice. In its effort to improve the judiciary, the State party should ensure greater efficiency of the judicial system to ensure equal access to justice for all, including minorities and indigenous peoples, in conformity with the Committee’s general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.”

72. In its concluding observations on Cambodia in June 2011, the Committee on the Rights of the Child (CRC) expressed “deep concern that thousands of families and children, especially urban poor families, small-scale farmers and indigenous communities, continue to be deprived of their land as a result of land grabbing and forced evictions carried out by people in positions of power.”¹⁴³ The Committee recommended that Cambodia “establish a national moratorium on evictions until the determination of the legality of land claims is made.”¹⁴⁴

B. International developments in the human rights responsibilities of business enterprises

73. Since the 2007 SRSR Report, there have been developments at the international level with regard to the State duty to protect against human rights abuses by third parties, including the private sector, and the responsibility of business enterprises.¹⁴⁵ On 16 June 2011, the United Nations Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.¹⁴⁶ While not a legally binding document, this endorsement established the Guiding Principles as the authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.¹⁴⁷

74. The Guiding Principles contain 31 standards¹⁴⁸ to support the implementation of the United Nations “Protect, Respect and Remedy” policy framework.¹⁴⁹ They are grounded in

¹⁴³ Committee on the Rights of the Child, Concluding Observations: Cambodia, CRC/C/KHM/CO/2, 20 June 2011, para. 61.

¹⁴⁴ Ibid, para. 62, “The Committee urges the State party to establish a national moratorium on evictions until the determination of the legality of land claims is made. The Committee also urges the State party to ensure that families and their children are not made homeless as a result of evictions for private and development activities. The Committee further recommends that the State party fully implement the recommendations of the Special Rapporteur on the situation of human rights in Cambodia in relation to access to land and livelihood (A/HRC/4/36 and A/HRC/7/42).”

¹⁴⁵ Prior to this development, the United Nations Secretary-General launched the voluntary Global Compact in 2000, a global platform which convenes businesses together with UN agencies, labour, and civil society in support of human rights, labour, the environment and anti-corruption. In 2005 the United Nations Commission on Human Rights (replaced by the Human Rights Council in 2006) appointed a Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises who was mandated to identify and clarify standards of corporate responsibility and accountability regarding human rights, including the role of States.

¹⁴⁶ See Human Rights Council Resolution A/HRC/17/L.17/Rev.1, 15 June 2011. The Guiding Principles on Business and Human Rights are contained in the annex to the Special Representative’s 2011 report to the Human Rights Council (A/HRC/17/31), found at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.31_en.pdf.

¹⁴⁷ The Office of the United Nations High Commissioner for Human Rights in Cambodia published in December 2011 the “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” in both English and Khmer, available at: http://cambodia.ohchr.org/WebDOCs/DocPublications/Business-and-HR-Guidelines/Business%20and%20Human%20Rights_English.pdf and http://cambodia.ohchr.org/WebDOCs/DocPublications/Business-and-HR-Guidelines/Business%20and%20Human%20Rights_Khmer.pdf.

¹⁴⁸ They are the product of six years of research and extensive consultations involving governments, businesses enterprises and associations, civil society, affected individuals and communities, and investors. A summary of the consultations can be found on the list of reports of the Special

recognition of States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms. Therefore, the standards on business and human rights are directly relevant to Cambodia through their international legal commitments and domestic law. The Guiding Principles apply to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. Therefore, *all* businesses involved in land concessions in Cambodia (the host State), including business operations from foreign countries (the home States) bear the responsibility to protect against human rights violations.

75. The new United Nations Working Group on Business and Human Rights, established in 2011, has undertaken the promotion of the Guiding Principles, the endorsement of which has led to a convergence of global standards and initiatives on business and human rights, including the standards of the International Standardisation Organisation (ISO) Guidance on Corporate Responsibility, Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, the UN Global Compact, and the International Finance Corporation (IFC) Sustainability Framework, among others.¹⁵⁰

76. The 2011 IFC Policy and Performance Standards on Environmental and Social Sustainability acknowledges "an emerging international consensus that the private sector has a responsibility to respect human rights," including trying to close the gap in protection against forced evictions.¹⁵¹ And most recently, the Association of Southeast Asian Nations

Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises, <http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx>. They highlight what steps States should take to foster business' respect for human rights, providing a standard for stakeholders to monitor and assess these steps, and show how businesses can become aware and demonstrate to others that they respect human rights and reduce the risk of causing or contributing to human rights harm. They also stipulate what both States and business enterprises should do to enhance access to effective remedies for those whose rights have been harmed.

¹⁴⁹ The "Protect, Respect and Remedy" policy framework was unanimously welcomed in 2008 by the United Nations Human Rights Council, including (1) State duty to protect against human rights abuses by third parties, including business enterprises, through policies, regulation, and adjudication; (2) the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address the adverse impacts of their activities; and (3) the need for greater access to remedy for victims of business-related abuse, both judicial and non-judicial. See "Protect, Respect and Remedy:" a framework for business and human rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/8/5); Summary of Five Multi-stakeholder Negotiations (A/HRC/8/5/Add.1), 23 April 2008.

¹⁵⁰ Report of the United Nations Working Group on Business and Human Rights, A/HRC/20/29, 10 April 2012, http://www.ohchr.org/Documents/Issues/Business/A.HRC.20.29_AEV.pdf.

¹⁵¹ See, IFC, "Update of IFC's Policy and Performance Standards on Environmental and Social Sustainability, and Access to Information Policy," April 2012, para. 9 on Business and Human Rights: "There is an emerging international consensus that the private sector has a responsibility to respect human rights. Many corporations, whether IFC clients or not, increasingly acknowledge the relevance of greater integration of human rights relevant to business into their due diligence. The updated Sustainability Policy proposes that IFC continue to rely on the Performance Standards' broad coverage of human rights issues relevant to business. However, IFC also proposes to explicitly acknowledge the responsibility of the private sector to respect human rights and to recognize that it may be appropriate for clients to undertake additional due diligence in some high risk circumstances. Certain gaps in the current Performance Standards, such as human trafficking, forced evictions, and community access to cultural heritage, have been filled in the proposed Performance Standards. IFC has worked with Bank staff and management in developing this approach and the specific language."

(ASEAN) announced that the first thematic study by its relatively new Intergovernmental Commission on Human Rights (AICHR) would focus on business and human rights in a manner that is fully compliant with the United Nations frameworks, especially the Guiding Principles.¹⁵² The convergence of these standards is directly applicable to the Cambodian context, given the large number of business enterprises (including international and domestic, and those wholly or partly owned by the State) involved in land concessions.¹⁵³

C. International standards for preventing and addressing human rights impact

77. There are a myriad of standards which set out the international legal obligations of States for addressing environmental and social impact.¹⁵⁴ There are also international standards related to corruption, and access to information and transparency specifically.¹⁵⁵ Furthermore, business enterprises are under international obligation to carry out “due diligence,” or to identify, prevent, mitigate and account for how they address their adverse human rights impacts.¹⁵⁶ Not only do businesses have this responsibility, but States are required to protect against violations through effective policies and regulations related to business activities. As noted earlier, States have the duty to protect against human rights abuses by third parties in their country or area of jurisdiction. Moreover, they are required by international human rights obligations to exercise adequate oversight when they contract with or legislate for business enterprises.¹⁵⁷

78. The process for both States and businesses should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.¹⁵⁸ This applies to all State and donor-operated projects and to all business enterprises, regardless of size (whether transnational corporations, conglomerates or small and medium owned enterprises), sector, structure, ownership or country of domicile or operation (Cambodian or foreign). In the context of land concessions, it may refer directly to environmental and social impact—carrying out assessments that involve meaningful consultation with potentially affected groups and other relevant stakeholders.

79. Moreover, the assessment of impact should be a participatory process and development planning should be inclusive of all those potentially affected. Both the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social

¹⁵² Remarks by Rafendi Djamin, Indonesian Representative to ASEAN Intergovernmental Commission on Human Rights, at Asia Pacific Forum of National Human Rights Institutions Regional Conference on Business and Human Rights, 11-13 October 2011, Seoul, South Korea.

¹⁵³ Note also that the Committee on the Elimination of Racial Discrimination, in its concluding observations in 2010, encouraged business entities engaging in ELCs “to take into consideration their corporate social responsibility as it relates to the rights and well-being of local populations.” See CERD/C/KHM/CO/8-13, para.17.

¹⁵⁴ In addition to the obligations enshrined in the international human rights framework, references can be found in international environmental law, for example the Convention on Biological Diversity, to which Cambodia acceded in 1995. Article 8 covers establishing a system of protected areas and article 14 covers impact assessment and minimizing adverse impacts.

¹⁵⁵ The United Nations Convention Against Corruption, to which the Royal Government of Cambodia acceded in September 2007, lays out requirements for public reporting in article 10 and participation of society in article 13, for example.

¹⁵⁶ Guiding Principles on Business and Human Rights, 17-24.

¹⁵⁷ *Ibid.*, principle 5.

¹⁵⁸ *Ibid.*, principle 17.

and Cultural Rights (ICESCR) recognize the right of all individuals and peoples to “freely pursue their economic, social and cultural development.” The United Nations Declaration on the Right to Development¹⁵⁹ laid the foundation for participation and consultation in development processes, which was complemented by references in the United Nations Declaration on the Rights of Indigenous Peoples, which upholds free, prior and informed consent.¹⁶⁰ This language has been incorporated into other international standards, for example the 2011 update on IFC Policy and Performance Standards on Environmental and Social Sustainability.¹⁶¹

80. In addition to the international human rights obligations of States and businesses, there are practical, operational and logistical reasons for incorporating these requirements into business and development activities, and many governments have incorporated these standards into their national laws and policies, and companies into their standard operations.¹⁶²

V. Overview of ELCs and other concessions in Cambodia

A. Official number of ELCs and other concessions granted (overview)

81. According to official statistics available for 1998, Cambodia’s total territory is 18.1 million hectares, of which 6.5 million hectares is considered arable and up to 2.7 million hectares reasonably productive.¹⁶³ The number of ELCs listed in the previous two SRSG reports were based on official information from the Ministry of Agriculture, Forestry and Fisheries, the Council for the Development of Cambodia, and other official sources, including local authorities. The 2004 SRSG report listed 64 ELCs that had been granted or for which approval had been sought in 13 provinces. Based on information provided by the MAFF in early 2007, from 1992 to December 2006, the Government granted 97 ELCs in 16 provinces and municipalities. Of these nine concessions had been agreed to in principle by the Council of Ministers, covering an area of 64,208 hectares. The 2007 SRSG Report listed 59 concessions as of 31 December 2006 (multiple concession contracts were cancelled from 1992 to the end of 2006), covering an area of 943,069 hectares in 15 provinces.

¹⁵⁹ United Nations General Assembly, A/RES/41/128, 4 December 1986, article 1 states that everyone is “entitled to participate in, contribute to, and enjoy economic, social, cultural and political development.”

¹⁶⁰ UNDRIP, article 32(2). For a practical guide, see Oxfam, *Guide to Free, Prior and Informed Consent*, 27 July 2010.

¹⁶¹ IFC, performance standard 7.

¹⁶² For commentaries on the utility of human rights policies for businesses, see Business and Human Rights Resource Centre, “Commentaries on human rights policies,” <http://www.business-humanrights.org/ToolsGuidancePortal/Policies/Commentaries>, and for a list of companies which have incorporated human rights into their statements, see “Company policy statements on human rights,” <http://www.business-humanrights.org/Documents/Policies>. For a list of member companies of the Global Business Initiative on Human Rights, see <http://www.global-business-initiative.org/Members.html>. Of these members, at least Chevron, Sime Darby, General Electric, Unilever, Coca Cola, Novo Nordisk, and Total operate in Cambodia.

¹⁶³ See National Institute of Statistics, *General Population Census of Cambodia, 1998 Provisional Population Totals*, page 3. Cambodia Development Resource Institute, *Land tenure in Cambodia: a data update*, working paper, 19 October 2001, indicates that there are 3.9 million hectares of agricultural land.

82. The only publicly available official data on ELCs are posted on the MAFF website, however, the information provided, including company profile, has not been regularly updated, and data regarding ELCs is incomplete. In June 2012, a table on the statistics of ELC companies that have signed a contract with MAFF was uploaded, listing 117 companies with a land surface of 1,181,522 hectares from January 1996 to 6 June 2012.¹⁶⁴ The table lists 24 companies that signed an ELC contract with MAFF in 2011, 15 companies in 2010, 18 companies in 2009, 15 companies in 2008, 5 companies in 2007, 17 companies in 2006, 8 companies in 2005, 2 companies in 2004, 6 companies from 2000 to 2001, and 7 companies from 1996 to 1999. The table listed four companies that signed an ELC contract with MAFF in 2012, one of which signed the contract after the 7 May 2012 ELC directive to halt the granting of economic land concessions.¹⁶⁵ According to sub-decrees published in the Council of Minister's Royal Gazette, a further five concessions were granted to private companies on 7 June 2012, all of which are located in protected areas.¹⁶⁶ Given the irregularity of the official data available, a reliable tally is not possible.

83. Although the data on ELCs contained in the MAFF website was updated in June 2012, the list does not include a considerable number of agricultural concessions that are known to exist, in some cases for several years. Many of these developments include concessions that have been granted within protected areas and for which sub-decrees designate areas as sustainable use zones for agricultural investment. It is possible that these concessions were granted by authorities other than MAFF, and this is why they are not included in the MAFF list of ELCs, but it is of considerable concern that these projects are not cohesively documented.

84. Regarding the granting of social land concessions, the Ministry of Land Management, Urban Planning and Construction reports having distributed land to both civilians and veterans of the armed forces. For example, in recent years, in addition to land given as gifts, social land concessions have been distributed to 50 civilian households in Kampong province, 288 in Oddar Meanchey province, 174 in Svey Reang province, and 225 in Kampong Cham province. In cooperation with development partners, many additional households received land according to the Ministry, including 2,285 households in Kratie, Kampong Cham, and Kampong Thom provinces (with support from GIZ); 510 households in Battambang province (with support from the Japan International Cooperation Agency, JICA) and another 405 households in Battambang province (with support from NGO Habitat for Humanity); 510 households in Kampong Speu province (with support from NGO Life With Dignity) and 893 households in Kampong Chhnang province (with support from NGO Life with Dignity). In the form of state land regularization in forest areas, 11,828 hectares of land have been distributed to 3,790 households in Kratie province, 6,257 hectares to 4,239 households in Banthey Meanchey province, 4,929 hectares to 2,153

¹⁶⁴ MAFF, "News," Economic Land Concessions, available in Khmer only, last accessed on 15 July 2012 at <http://www.elc.maff.gov.kh/en/news/122-2012-06-25-12-13-35.html>.

¹⁶⁵ According to the MAFF table, China Great Cause Company was granted a concession of 5,980 hectares for a rubber plantation and other agro-industrial crops in Preah Vihear province on 6 June 2012.

¹⁶⁶ The sub-decrees designated land within protected areas as sustainable use zone for granting to private companies. The concessions were granted to: A2A Town of 7,668 hectares for eco-tourism in Kirirom National Park on 7 June 2012; BSC Import Export Co., Ltd. of 4,557 hectares for agro-industrial crops in Roneam Donsam Wildlife Sanctuary on 12 June 2012; Khun Sea Import Export of 8,200 hectares for rubber in Kulen Prom Tep Wildlife Sanctuary on 7 June 2012; Metrey Pheap Agro-Industry of 8,520 hectares for rubber and animal raising in Kulen Prom Tep Wildlife Sanctuary on 12 June 2012; Roath Sokhon Corporation of 9,000 hectares for rubber in Lumphat Wildlife Sanctuary on 7 June 2012; and Lim Royal Joint Stock of 9,068 hectares for agro-industrial crop in Phnom Prich Wildlife Sanctuary on 7 June 2012.

households in Kampong Cham province, 222 hectares to 270 households in Oddar Meanchey province, and an unclear number of hectares distributed to 3,476 households in Battambang province. According to the Ministry, the total distribution of land for poor civilians in all forms is 194,820 hectares for 30,588 households, including 3,965 houses.¹⁶⁷ The Ministry also reported on the process for granting land concessions to veterans, soldiers with disabilities and families of fallen soldiers.

85. Cambodia's extractive industries (including mining, oil and gas) and energy sector are currently undergoing expansion. The mining sector currently includes operations for small-scale extraction and production of materials, especially those related to the construction industry, for example gravel, limestone, and sand, as well as exploration for bauxite and gold. According to the local organization Development and Partnership in Action (DPA) and the Extractive Industries Social and Environmental Impact (EISEI) Network, 167 mining companies had received mining exploration licenses as of May 2010.¹⁶⁸ As for petroleum, Cambodia is currently in the exploration phase, and the website of the Cambodia National Petroleum Authority lists the onshore and offshore operations currently under investigation.¹⁶⁹

86. As regards hydropower, at present there are three dams operational in Cambodia: Kirirom I, Kampong Speu province, with a capacity of 12MW, Ochum II, Rattanakiri province (1MW), and the recently opened Kamchay hydropower dam in Kampot (193MW). There is reportedly a further five large-scale hydropower projects under development, including the Kirirom III (18MW), Lower Russei Chrum (338MW), Stung Tatay (246MW), all in Koh Kong province, and the Stung Atay (120MW) in Pursat province. Additionally, at least nine other projects are subject to agreements to undertake feasibility studies. There is reportedly one coal-fired plant under development.¹⁷⁰

B. Access to information and documents

87. As discussed earlier, despite recent efforts by MAFF to update its website, data on ELCs remains incomplete, including some company details, name and nationality of director, but not shareholders and affiliates.¹⁷¹ Moreover, the information provided does not include concessions of 1,000 hectares or below. As mentioned above, it appears that some concessions or long-term leases over state land have been granted or approved by other ministries, such as MEF and MoE, but full data on these types of concession have not been made publicly available. Access to the information on those land concessions and companies has only been obtained through exhaustive reviews of the sub-decrees published in the Council of Minister's Official Gazette, and there is no easily accessible or searchable

¹⁶⁷ Letter from the Minister of Land Management, Urban Planning and Construction, H.E. Im Chunn Lim, to Surya Subedi, 23 May 2012.

¹⁶⁸ DPA-EISEI, "Environmental and Social Impacts from the Extractive Industry's Expansion in Cambodia," Position Paper, 2012. The number of mining operations publicly listed by MIME was not accessible as of the writing of this report. The Open Development Initiative lists company information for 87 mining concessions.

¹⁶⁹ CNPA, "Exploration and Development," http://www.cnpa.gov.kh/index.php?option=com_content&view=article&id=50&Itemid=125.

¹⁷⁰ MIME, General Directorate of Energy, Department of Hydropower, presentation on "Development of energy in Cambodia," 1 December 2011, available from the Open Development website (in Khmer only).

¹⁷¹ MAFF, Overall Status of Economic Land Concessions in Cambodia, last accessed 15 July 2012, at <http://www.elc.maff.gov.kh/en/news/12-elc-status.html>. Some Cambodian concession companies are searchable on the Ministry of Commerce website.

database of these concessions available to the public.¹⁷² Among these sub-decrees are decisions to reclassify certain areas of land as private state land or designate land within protected areas as sustainable use zones in order to facilitate and legitimize development therein. The lack of transparency and information surrounding land concessions granted within protected areas under the administration of the Ministry of Environment is of serious concern, and it is not clear whether the legal and procedural requirements for reclassification of state public land and the granting of concessions have been completed before concession activity begins.

88. Despite the dearth of publicly available information, the Government has pledged in its National Strategic Development Plan Update to “equitable and fair public participation in all matters through democratic and peaceful means to ensure that the free will and informed choices of the majority are adopted and implemented while at the same time protecting the rights and welfare of the minority.”¹⁷³ Indeed, a core element of the Rectangular Strategy for Growth, Employment, Equity and Efficiency is “adherence to the rule of law, transparency, predictability, and accountability of public institutions” in all government transactions.¹⁷⁴

89. As one of the main objectives of this report is to promote transparency and to provide a balanced analysis that incorporates the appropriate ministries’ perspective and information, on 28 March 2012 I requested in writing detailed information on the granting and management of economic and other land concessions from MAFF,¹⁷⁵ MLMUPC,¹⁷⁶

¹⁷² The Royal Gazette is available by paid subscription only, delivered in hard copy by the Council of Ministers. The Khmer Law Association has developed software with the scanned version of the sub-decrees, also available by paid subscription.

¹⁷³ Royal Government of Cambodia, National Strategic Development Plan Update (2009-2013): for growth, employment, equity and efficiency to reach Cambodia’s Millennium Development Goals, 30 June 2010 (phase II of the Rectangular Strategy for Growth, Employment, Equity and Efficiency), page 11, para. 29.

¹⁷⁴ Ibid.

¹⁷⁵ Specifically, I requested updated information on the status and profile of all ELCs granted up until April 2012 in Cambodia and the businesses involved, given that this information is not readily available on the website of the Ministry. I requested data on the size and use of concessions; contracts and details of ownership; maps and geo-referencing data; and information required to grant concessions, such as the classification and registration of land, environmental and social impact assessments, and records of public consultations, as well as details regarding resolutions to land conflict associated with ELCs. I also requested information on the progress of an Economic Land Concession Logbook, and the work of the Technical Secretariat on ELCs. Finally, I also requested information on efforts the Ministry is making to protect the environment and foster sustainable development practices when granting economic and other land concessions.

¹⁷⁶ Specifically, I requested information on the role of the Ministry in the process of granting economic and other land concessions, in particular regarding the registration of land concessions in accordance with article 53 of the 2001 Land Law. Most significantly, I was interested in: information on the systematic mapping, classification and registration of state public and private land in Cambodia; the creation and maintenance of a state land database; and the allocation, management and reclassification of state land in accordance with the Sub-Decree on State Land Management of 2005. In addition, I requested information on the activities of the Cadastral Commission and the progress the Commission has had so far in its mission to resolve land conflicts relating to unregistered land on which people claim possession rights (i.e. disputes occurring outside adjudication areas, and the disputes within adjudication areas that cannot be resolved by the Administrative Commission), as well as information about social land concessions. Finally, I requested information on efforts the Ministry was making to protect the environment and foster sustainable development practices in the context of economic and other land concessions.

and the Ministry of Environment.¹⁷⁷ I regret that I received no response from MAFF.¹⁷⁸ Useful information was provided by the MoE during my meeting with the Minister in May 2012, however, the information was incomplete and no additional information has been received subsequently. On 12 June 2012, I received a response from MLMUPC on land registration and social land concessions.

90. Currently the most accessible publicly available information on economic and other land concessions and the business enterprises involved, although also missing data, are non-governmentally run open data sources and web portals, such as the Open Data Cambodia Project (Open Development Cambodia) and the Sithi Project of the Cambodian Centre for Human Rights, in addition to thorough research and monitoring by non-governmental development, environmental and human rights organizations.¹⁷⁹ Mapping of concessions in Cambodia through global positioning system (GPS) data has advanced considerably since the 2007 SRSR Report. Licadho, amongst others, has contributed significantly in terms of mapping of concessions nationally. In June 2012, the Open Development Cambodia website listed a total number of 320 ELCs in 21 provinces including Phnom Penh, granted to foreign and local companies, 87 mining concessions (mainly for exploration) in 19 provinces, and 23 special economic zones in 8 provinces.¹⁸⁰ The Sithi Project has publicized a land conflicts map organized by province, which documents 223 cases publicly reported from 2007-2011, including ownership disputes, land grabs and land evictions, but does not disaggregate the cases related to economic and other land concessions.¹⁸¹

91. The implementation of the ELC directive of May 2012 on land titling for landless communities is also problematic in terms of access to information. Without first providing clear details on the new policy's implementation to relevant ministries, communities, local

¹⁷⁷ Specifically, I requested information on any concessions that may have been granted within protected areas and information on the status and profile of all the business enterprises that have received land concessions in protected areas through April 2012. I requested information on the purpose of the land concessions, size and use of concessions; contracts and details of ownership; maps and geo-referencing data; and information required to grant concessions (classification and registration of land, environmental and social impact assessments, and records of public consultations). Regarding the status of protected areas, I requested information on progress made since the adoption of the 2008 Protected Areas Law, including: establishment and modification of protected areas and the sub-decree that defines these areas; the status of zoning or modification of the zone boundary; the national strategic and activity plan for protected area management; the involvement and access rights of local communities and indigenous people communities as provided under Chapter 6 of the law; setting up of a National Committee for Conflict Resolution on Protected Area Management (NCRPAM) as stated in article 20 of the law; and information regarding the dispute resolution process related to disputes from investment projects within protected areas. Finally, I inquired about the Ministry's efforts to protect the environment and foster sustainable development practices when granting economic and other land concessions.

¹⁷⁸ I was not granted a meeting with the Ministry of Agriculture, Forests and Fisheries during my May 2012 mission.

¹⁷⁹ For example, Licadho, Adhoc, NGO Forum, Extractive Industry Social Environmental Impact Network/Development and Partnership in Action, Oxfam, Cambodian Centre for Human Rights, Cambodia Human Rights Action Committee, Cambodia Legal Education Centre, East West Management Institute, Natural Resources Protection Group, Equitable Cambodia, Indigenous Community Support Organisation, Sahmakum Teang Tnaut, Welthungerhilfe, Flora and Fauna International, Community Protection Network, and Wildlife Alliance, as well as their affiliates and partners around the country, are among some of the many organizations monitoring land concessions.

¹⁸⁰ Open Data Cambodia Project, Company Concession Profiles, <http://www.opendatacambodia.net/concessions/>.

¹⁸¹ Cambodia Human Rights Portal, The Reported Land Conflict Cases 2007-2011, http://sithi.org/temp.php?url=land_case.php&, last accessed 16 July 2012.

authorities, provincial authorities, owners of concession companies, donors involved in the land sector, or non-governmental organizations and community networks, a large group of youth was recruited and deployed in late June 2012 to demarcate land. Various policy documents and instructions were issued and publicized only after the demarcation had begun.¹⁸² These documents, however, did not make it clear which concessions would be targeted for titling according to the “leopard skin policy.” Despite the plan to demarcate land for titling within ELCs, many concessionaires were reportedly unaware that the land they were using would be part of the new scheme until the youth arrived on the property.

92. The Council of Ministers issued a letter on 26 June 2012 to the Ministry of Land Management, Urban Planning and Construction, informing them of the implementation of the May 2012 ELC directive.¹⁸³ On 4 July 2012, the Council for Land Policy issued a further instruction to the head of the Committee for State Land Management in all provinces regarding the implementation of the directive concerning indigenous land, areas with evergreen forest, semi-evergreen forests, and dense forests, as well as national defence bases and cultural heritage sites.¹⁸⁴ On 20 July 2012, the Council for Land Policy issued a further instruction on the identification of landholders and the issuance of initial certificates of ownership in the implementation of the directive.¹⁸⁵ Indeed, the progressive nature of the instructions and announcements issued in the aftermath of the deployment of youth to demarcate suggests a lack of comprehensive planning and harmonization with the existing legal framework and land titling system.

¹⁸² The initiative is reportedly financed by the Ministry of Land Management, Urban Planning and Construction, and subsidized by the Prime Minister’s personal funds, according to an announcement during a 14 June 2012 speech.

¹⁸³ Letter of the Council of Ministers. No.666 Sor.Cho.Nor, 26 June 2012, informed the Minister of MLMUPC of the Government’s decision to conduct expedited land registration in areas targeted for the implementation of PM’s Directive 01. The letter stated that the targeted areas include lands that have been excised from forest concessions, economic land concessions, land administered by the Ministry of Environment, and state land where there is an order to reclaim it by the provincial/municipal authority. Land ownership is to be granted to land holders who claim land not exceeding five hectares in such areas through two stages, first to grant preliminary land title, and second to be issued with the definite land title. For lands exceeding five hectares, only the portion that has been cultivated with crops shall be granted land ownership, and the uncultivated portion shall be registered as state private land and then granted to the holder in the form of small-scale economic land concessions for a period of 99 years. Those who have received land through the Government’s social land concession programme will be issued a certificate during this transitional period.

¹⁸⁴ Council for Land Policy, No.015, 4 July 2012, Instruction on the implementation of the Royal Government’s Directive No.01 BorBor, 7 May 2012 on the Strengthening and Increasing the Effective Management of Economic Land Concessions in Areas of Indigenous Communities, Evergreen Forest, Semi-Evergreen Forest, Dense Forest, and in Areas of National Defence Bases and Historical and Cultural Heritage Sites, signed by Senior Minister of the MLMUPC. The Instruction provides for indigenous peoples who choose to live individually without entering as a member of an indigenous community to have private ownership on the land parcel that they have occupied and cultivated, and requires that the provincial Committee of State Land Management shall submit a proposal for reclassification if the land in question is state public land. It also instructs that in the process of land identification, if there are citizens claiming and/or requesting for pieces of land situated in areas of evergreen forests, semi-evergreen forests, dense forest, national defence bases and historical and cultural heritage sites, such claims and demands shall not be considered.

¹⁸⁵ The Council for Land Policy, Instruction No. 018, 20 July 2012, regarding Land Identification, Resident Identification and the Issuance of Preliminary Certificates of Ownership in Compliance with the Government’s 7 May 2012 Directive No.01.

C. Number of ELCs and other concessions granted within protected areas and on the land of indigenous peoples

93. Many concessions have been granted within protected areas over the past few years. The Government granted land concessions to at least 109 companies in 16 out of the 23 protected areas established by the 1993 Royal Decree, most of them sub-decrees signed for agro-industry and eco-tourism purposes (see Annex I – Table on land concessions granted within protected areas). The Ministry of Environment affirmed that some land concessions have been granted in protected areas under the Ministry’s administration and management, but only in the buffer areas of the protected areas (or in sustainable use zones) in order to prevent the further destruction of the forest and natural resources in the core and conservation zones. According to information provided by the MoE on the total land surface exploited in natural protected areas, 2011 data shows that out of the total protected land surface area of 3,143,763 hectares, there are 322,113 hectares used for rubber plantations; 172,731 hectares used for other agro-industrial crops; 38,831 hectares used for mining exploration; 4,593 hectares used for hydro-power dams; and 89,359 hectares used for eco-tourism.¹⁸⁶ This totals 627,627 hectares, or just under 20 percent of Cambodia’s total protected areas.

94. As the Ministry of Environment and MAFF did not provide the detailed official information requested, it is not possible to confirm the current exact number of land concessions and other development projects in protected areas. According to a report released in March 2012 by NGO Adhoc, in 2011 the Government had issued 123 sub-decrees to grant land concessions to private companies with a land area of 751,882 hectares; most of the land was excised from protected areas, including wildlife sanctuaries and national parks.¹⁸⁷ Concessions granted to private companies covered more than 500,000 hectares within protected areas.

95. Many concessions have been granted on indigenous peoples’ land, despite protections under the 2001 Land Law and April 2009 sub-decree on indigenous land registration. The 2007 SRSG Report listed at least 25 ELCs known to affect indigenous land in Kampong Thom, Kratie, Mondulhiri, Oddar Meanchey, Rattanakiri and Stung Treng provinces, as well as concessions for other purposes on indigenous land in Kampong Speu (Oral district), Mondulhiri (Bousra commune), Pursat and Preah Vihear provinces. At the time of reporting, at least 98 land concessions were granted on indigenous peoples’ land (see Annex II – Table on land concessions granted in areas inhabited and traditionally used by indigenous communities).

VI. The law and the practice: concessions and compliance with legal requirements and procedures

96. Given the relatively well-developed legal and policy framework governing the granting and management of economic land concessions, as outlined in section III, it is difficult to reconcile the current practice. The promotion of private sector investment appears to have taken precedent over compliance with the requirements of the law, resulting in the granting of large tracts of land in protected areas, on the land of indigenous peoples, and in primary forest areas. Moreover, there is a lack of transparency, oversight, and public monitoring and reporting in relation to concessions granted. As mining,

¹⁸⁶ Data shared during a meeting on 10 May 2012 between the Minister of the Environment, H.E. Mok Mareth and Surya Subedi.

¹⁸⁷ Adhoc, *The Report of Land and Housing Rights* 2011, March 2012.

hydropower projects, and other types of concessions are less numerous and comprehensive data is more difficult to obtain, this section of the report focuses for the most part on the legal compliance of ELCs.

A. Size and ownership

97. There is evidence that suggests concessionaires have been allowed to circumvent the 10,000 hectare per person limit on concessions established in article 59 of the 2001 Land Law by obtaining separate but contiguous concessions and using them for the same purpose (see maps in Annex V).¹⁸⁸ In some cases, the same company has registered adjacent concessions separately, but they are listed using the name of a family member or affiliate (who would be categorized as a legal entity controlled by the same person). While the majority of concessions granted since the promulgation of the 2001 Land Law do not exceed the 10,000 hectare limit, the 2007 SRSR Report cited nine ELCs that do.¹⁸⁹ According to the most recent MAFF list, no ELCs exceeding 10,000 hectares have been granted since the 2007 SRSR Report.

98. Nevertheless, although difficult to track, there are several possible new violations. For example, two concessions approved by the Government in February 2010 for a sugar cane plantation were granted to Cambodian Senator Oknha Ly Yong Phat and his wife, Mrs. Kim Heang, in Kampong Speu province. The concessions were granted to the Phnom Penh Sugar Company (8,506 hectares) and Kampong Speu Sugar Company (8,245 hectares).¹⁹⁰ In addition, three concessions were granted in January 2008 for a sugar cane plantation in Oddar Meanchey province to three companies associated with Senator Ly Yong Phat: Angkor Sugar (6,523 hectares), the Tonle Sugar Cane Company (6,618 hectares) and the Cane and Sugar Valley Company (6,595 hectares). All three companies

¹⁸⁸ Maps produced by Licadho. In Kampong Speu province, Phnom Penh Sugar Company (8,506) and Kampong Speu Sugar Company (8,245) with extension; Angkor Sugar (6,523), Tonle Sugar Cane Company (6,618) and Cane and Sugar Valley Company (6,595) are reported to be linked to the same concessionaire in Oddar Meanchey province. In Preah Vihear province, Heng Non (Cambodia) International Company, Ltd. (6,488), Heng You (Cambodia) International Company, Ltd. (8,959), Heng Roi (Cambodia) International Company, Ltd. (9,119), Lan Feng (Cambodia) International Company, Ltd. (9,015) and Roi Feng (Cambodia) International Company, Ltd. (8,841). In Mondulakiri, Pacific Grand Joint-Stock Company (9,656 hectares), Pacific Pearl Joint-Stock Company Ltd. (9,614 hectares), Pacific Lotus Joint-Stock Company (9,014 hectares), and Pacific Pride Joint-Stock Company (9,773 hectares).

¹⁸⁹ SRSR 2007 report, page 11.

¹⁹⁰ Kampong Speu Sugar Co., Ltd., Letter No.002/2009 Koror, 22 September 2009 to the Prime Minister requesting approval for a proposed 10,000 hectares in Oral district, Kampong Speu province for sugarcane and other crops, and a processing factory, signed by Kim Heang, director of the company; Phnom Penh Sugar Co., Ltd., No.002/2009 Phor.Sor, 22 September 2009 to Prime Minister to request for his approval for a proposed 10,000 hectares in Oral district, Kampong Speu province for sugarcane and other crop and processing factory, signed by Cambodian Senator Oknha Ly Yong Phat, director of the company. Council of Ministers letter, No.175 Sor.Cho.Nor, 5 February 2010 to MAFF Minister to approve the land concession over 9,052 hectares for Kampong Speu Sugar Co., Ltd.; MAFF letter, No.2228/232, Kor.Sor.Kor/No.Phor.Phor.Kor, 12 April 2010 to the director of Phnom Penh Sugar regarding the status of the land concession, and to authorize the company to proceed with the sugar plantation on 8,343 hectares. (It should be noted that these two concessions are not listed on the June 2012 MAFF list of ELCs.)

were registered in the names of executives of the same Thai sugar company, but local communities widely believe the project to be connected to Senator Ly Yong Phat.¹⁹¹

99. In Preah Vihear province, ELCs were granted on 8 November 2011 in neighbouring Chheb, Chey Sen, and Tbeng Meanchey districts for acacia and sugar cane production to five affiliated companies: Heng Non (Cambodia) International Company, Ltd. (6,488 hectares), Heng You (Cambodia) International Company, Ltd. (8,959 hectares), Heng Roi (Cambodia) International Company, Ltd. (9,119 hectares), Lan Feng (Cambodia) International Company, Ltd. (9,015 hectares), and Roi Feng (Cambodia) International Company, Ltd. (8,841 hectares).¹⁹²

100. In Monduliri province, neighbouring ELCs were granted in September 2011 in Royor commune of Koh Nhek district for a rubber plantation to four affiliated companies: Pacific Grand Joint-Stock Company (9,656 hectares), Pacific Pearl Joint-Stock Company Ltd. (9,614 hectares), Pacific Lotus Joint-Stock Company (9,014 hectares), and Pacific Pride Joint-Stock Company (9,773 hectares).¹⁹³

B. Review, oversight and cancellation

101. Another phenomenon is the illicit use or non-exploitation of land after a land concession has been granted. Chapter 2 of the National Strategic Development Plan Update states that “land concentration and landless people are on a rising trend, adversely impacting on the equity and efficiency of land use. On the other hand, large areas under economic land concessions have not been utilized efficiently as targeted, needing strict government measures to tackle them.”¹⁹⁴ While some in the Government are aware of and have made efforts to combat this problem, resulting in the cancellation of land concession contracts in some cases, there has been irregular oversight over the use of land granted through concessions, with inadequate management and monitoring.

102. The 2007 SRSR Report stated that in December 2005 MAFF advised that ten active concessionaires had been reviewed, and that, apart from the cancellations of some concessions, it was not clear whether a general review of existing concessions had commenced. The largest concessions, including the Pheapimex concession in Pursat and Kampong Chhnang provinces and the Green Sea concession covering 100,852 hectares in Stung Treng province, had not been reduced. More current yet still outdated information found on the MAFF website reports that from May to June 2009, MAFF organized five working groups tasked with reviewing and evaluating all existing ELCs. This resulted in the cancellation of five ELCs.¹⁹⁵

¹⁹¹ Bridges Across Borders Cambodia, *Bittersweet, A Briefing Paper on Industrial Sugar Production, Trade and Human Rights in Cambodia*, September 2010.

<http://babcambodia.org/developmentwatch/cleansugarcampaign/bittersweet.pdf>.

¹⁹² These five companies signed a contract on the same date (8 November 2011), according to the June 2012 MAFF list. According to the Ministry of Commerce website, these companies are registered at the same address in Cambodia and China, although with different directors' names.

¹⁹³ According to MAFF, all companies signed a contract on 9 September 2011, and according to the Ministry of Commerce website, these companies are registered at the same address in Cambodia and at different addresses in Vietnam.

¹⁹⁴ National Strategic Development Plan Update, page 10.

¹⁹⁵ According to the overview of ELCs on the MAFF website, up to April 2010, nine economic land concessions covering an area of more than 10,000 hectares were subject to negotiations to reduce the area to 10,000 hectares. Between May and June 2009, MAFF established five working groups to review and evaluate all economic land concession companies in 16 provinces. In July 2009, the

103. More recently, according to a MAFF report, the Ministry set up a mixed working group including the Technical Secretariat of ELCs to undertake a countrywide review and evaluation of concessions in January 2011.¹⁹⁶ The findings resulted in a proposal by MAFF to the Prime Minister to cancel the ELC contracts of 12 companies due to their inactivity and non-compliance with their contractual obligations and master plan, including allowing illegal logging and land encroachment within the granted areas.¹⁹⁷ The review also found that 51 companies had implemented their activities according to their contract agreements and master plans and 75 companies were given a warning or advised to correct irregularities.¹⁹⁸

104. According to MAFF statistics from 8 June 2012, the largest ELC holder, Pheapimex Company owned by Oknha Lao Meng Khin continued to hold the same land area of 315,028 hectares, while Green Sea Company owned by Cambodian Senator Oknha Mong Reththy in Stung Treng province was still listed as holding a land area of either 100,852 hectares or “approximately” 70,000 hectares, but the current size is unclear.¹⁹⁹ In addition, two affiliated companies, First Bio-Tech Agricultural (Cambodia) and World Tristar Entertainment (Cambodia) in Chhouk district, Kampot province, as well as Heng Brother and Heng Heap companies, both in Rattanakiri province, all supposedly had their contracts cancelled but nevertheless were listed among the MAFF’s current ELC statistics of 8 June 2012.

105. Although the Government has made efforts to address the problem of inactive or improperly developed concessions, the statistics reveal that the review, oversight and cancellation of land concession contracts that have been conducted so far has not been consistent. The 7 May 2012 directive on ELCs expressly aims to address this challenge.

working groups submitted reports to MAFF, after which MAFF has evaluated and issued guidance to 38 companies that were progressing slowly or late to start activities within the concession. MAFF also requested that the Government cancel a number of concessions, which resulted in the eventual cancellation of five ELCs with a land area equal to 40,171 hectares.

¹⁹⁶ MAFF letter No.2483 KSK, 4 April 2011, from Minister of Agriculture, Forestry and Fisheries to Prime Minister regarding a proposal to cancel ‘agreement in principle’ and ELC contract of 12 companies in Kampot province’s Chhouk district; in Mondulakiri province’s Keo Seima and Pichreada districts; Ratanakiri province’s Andong Meas and Oyadao districts; Kampong Thom province’s Santuk district; Kratie province’s Snoul, Sambo and Kratie districts.

¹⁹⁷ The 12 companies are: World Tristar Entertainment (Cambodia) Co., Ltd. of 9,800 hectares in Kampot province’s Chhouk district; First Bio-Tech Agricultural (Cambodia) Co., Ltd. of 10,000 hectares in Kampot province’s Chhouk district; Agro Forestry Research Co., Ltd. of 7,000 hectares in Mondulakiri province’s Chong Phlas commune, Keo Seima district and in Pu Chri commune, Pechreada district; Heng Development Co., Ltd. of 8,655 hectares in Rattanakiri’s Andong Meas district; Heng Heap Investment Co., Ltd. of 7,000 hectares in Rattanakiri province’s Oyadao district; Heng Mean Investment Co., Ltd. of 917 hectares in Kampong Thom province’s Santuk district, Krayea commune; Kratie City Power Ltd. of 800 hectares in Kratie’s Sambo district; Gold Menthol II Co., Ltd. of 824 hectares in Kratie province’s Kratie district; Mekong S.C Development Co., Ltd. of 834 hectares in Kratie province’s Kratie; PSY Co., Ltd. of 950 hectares in Kratie province’s Sambo district; Seal Development Co., Ltd. of 950 hectares in Kratie province’s Sambo district; TTY Cooperation Co., Ltd. of 928 hectares in Kratie’s Snoul district.

¹⁹⁸ In response to MAFF’s proposal, the Council of Ministers informed the Minister of Agriculture, Forestry and Fisheries that the Government agreed with the MAFF’s proposal to cancel the “agreement in principle” and ELC contracts of the 12 companies and to convert the land to state property. See Letter of the Council of Ministers, No.437 Sor.Cho.Nor, Kor.Sor, 8 April 2011 from the Deputy Prime Minister, Office of the Council Ministers, to Minister of Agriculture, Forestry and Fisheries.

¹⁹⁹ List of ELCs that have signed the contract with MAFF, as of 8 June 2012, available on MAFF website (in Khmer only).

For companies already granted the use of land under an ELC, but failing to comply with applicable procedures and contracts, the Government has pledged to withdraw the ELC and place the land under direct control of the State. Although no public study has surfaced, as at the time of writing this report, there is information that ad hoc review efforts are underway at the provincial level, as well as some media reports that some concessions have been cancelled through the implementation of the directive.

C. Compliance with the framework for conservation of protected areas and forests

106. Under the 2008 Protected Areas Law, the Ministry of Environment is authorized to establish or modify protected areas according to specific criteria and following careful review of access to natural resources and land use. Boundary alteration or re-classifying protected areas must be done by sub-decree.²⁰⁰ At the time of writing, information that the Ministry of Environment had established or formally modified any protected areas had not been made publicly available, but increased numbers of land concessions, including ELCs, mining exploration licences, and large scale development projects have been granted within protected areas.

107. However, it has been observed that in practice, the systematic zoning for most protected areas is often not formally determined prior to a parcel of land being considered for a concession or development project. Rather, it appears that in many cases the zoning within protected areas is being decided upon the granting of land concessions or development projects. In some cases the process to designate an area as a sustainable use zone was decided only after a private company proposed a land concession or development project to the relevant government ministry, which then requested the Ministry of Environment to proceed with the necessary documentation to designate the status of the land as a sustainable use zone, and to reclassify the designated sustainable use zones as private state land. An example is the concession granted to Jing Zhong Ri Company within Lumphat Wildlife Sanctuary (see Annex IV for further analysis).

108. Most of the Government sub-decrees which serve to designate proposed areas for concessions within protected areas only state that “land has been determined as a sustainable use zone,” but do not mention the type of zone of the land area prior to this (See Annex I). It is therefore not clear if core or conservation zones are being reclassified, or if the areas in question were not previously demarcated according to the protected areas zoning system.

109. Although there is little information available to the public on the zoning of protected areas, it is thought that very few core zones and conservation zones have been formally demarcated. As noted earlier in the report, the law prohibits clearance or building in the core or conservation zones, and any development within the sustainable use or community zones can only take place with the appropriate approval from the Government at the request of the Ministry of Environment. Any development in these areas or in areas adjacent to protected areas must first be subject to an environmental and social impact assessment. While there is a need for further clarification from the Ministry of Environment regarding systematic zoning, it has been reported that many concessions are active in the central parts

²⁰⁰ Royal Decree of 1 November 1993 on the Protection of Natural Areas, article 3, allowed for the modification of the boundaries of protected areas provided this was “on the basis of scientific information involved in the conservation of ecology and the maintenance of the existing landscape in the Kingdom of Cambodia.” The 2008 Protected Areas Law, articles 8 and 13, also allows boundary alterations following full assessment of a proposal to modify the boundary.

of protected areas where there is primary forest. For example, Licadho has published data stating that 22 percent of the Boeung Per Wildlife Sanctuary has been covered by rubber plantations.²⁰¹

110. The Ministry of Environment, which was very cooperative during my May 2012 visit, explained to me the Government's policy in granting concessions in protected areas' sustainable use zones, including hydropower dams, eco-tourism projects, mining exploration and agro-industrial crop production, as necessary to set up a protected frontier to prevent further encroachment on the forest land within protected areas, in particular core zones and the conservation zones. The Ministry also maintains that it implements the "leopard skin policy," which aims to avoid affecting community land.

111. Due to these practices, there is concern that sub-decrees are being used opportunistically as a means for the Government to designate land within protected areas and grant it to concession companies. Upon review of sub-decrees published in the Royal Gazette, it appears that they are used on a regular basis to designate parcels of land as sustainable use zones within protected areas with no information provided as to whether full prior assessments and consultations have been conducted.

112. Moreover, as the name of the company is often mentioned in the sub-decree (often with reference to prior written correspondence), a reasonable observer would conclude that an arrangement has already been made with a prospective company to move forward with development in that area. In a number of instances, some weeks or months after an initial sub-decree, a further sub-decree is issued which classifies the assigned sustainable use zone land as private state land, thereby ensuring its eligibility to be granted as an economic or other type of land concession. This raises the question as to whether it is fully in compliance with the existing legal framework for the Government to reclassify state public land without going through the National Assembly.

113. A further example is provided in the commercial development zone and resort project being developed in Koh Kong province by Union Development Group (Annex III). Before the Government signed a long-term lease of 99 years to grant 36,000 hectares to the company within Botum Sakor National Park, a Royal Decree was executed on 9 April 2008 to amend the Royal Decree of 1 November 1993, which recognized this area as a protected national park. The new Royal Decree excised 36,000 hectares from Botum Sakor National Park's 171,250 hectares and reclassified the excised area as state private land. This allowed the Government to sign the lease with the company in May 2008, without passing through the National Assembly. It will be recalled that under the Land Law, state public land can only be reclassified as state private land through declassification by a law passed by the National Assembly.²⁰²

D. Public consultations and environmental and social impact assessments

114. As described in detail in section III, under the Cambodian legal framework essential pre-conditions for granting land concessions are public consultations and environmental and social impact assessments. Assessments are to be undertaken and reviewed, with the findings shared before the granting of concessions.

115. As mentioned in the 2007 SRSG Report, in most cases, there is little evidence that adequate public consultations (entailing good faith efforts to engage with all affected and to reach mutually agreed upon solutions) have been conducted prior to the granting of many

²⁰¹ Licadho map published in *The Cambodia Daily*, (issue number 730), 10-11 March 2012.

²⁰² Land Law, 2001, articles 16 and 17.

concessions. In contrast, decisions affecting the land on which communities live are often made without their involvement. Similarly, in most cases, genuine environmental and social impact assessments have generally not been undertaken before the granting of land for investment, or have been undertaken in some cases but not publicized or shared with affected communities.

116. Concessions that have been granted since 2007 seem to reflect this trend. The latest list of ELCs provided on MAFF's website shows that impact assessments were done on three of 117 concessions granted, following official approval of the companies' investment (*after* the company has already signed a contract with MAFF).²⁰³ This leaves unclear whether any assessment on ELCs granted by MAFF between 2006 and 2012 have been conducted, and, if so, whether the results of an assessment had been approved by the concerned Ministry before the companies started their activity.

117. According to the National Strategic Development Plan Update, in 2008 the Ministry of Environment reviewed and provided recommendations on environmental and social impact assessment reports for 37 public and private projects, a small fraction of the total number of concessions granted. Only 15 reports in the agricultural, industrial, energy, tourism and infrastructure sectors have been endorsed and none are publicly available. The Ministry of Environment also signed agreements with 61 investors on environmental protection, yet there is not information available on their implementation.²⁰⁴

E. Compliance with the legal protections for the land of indigenous peoples

118. The 2001 Land Law enshrines the rights of indigenous peoples to land, and the adoption of the sub-decree on indigenous land registration in April 2009 set in motion various initiatives by the Ministry of the Interior, Ministry of Rural Development, MLMUPC, bilateral donors, United Nations, and NGOs to assist indigenous communities to register as legal entities and apply for collective land titles. A pilot project was launched in 2009 to secure the collective land title of three indigenous communities in Rattanakiri and Mondulakiri provinces. In December 2011, these communities received the first collective land titles in Cambodia, a milestone achievement.²⁰⁵

²⁰³ Statistics on companies granted ELCs by MAFF, current as 8 June 2012, available at <http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf>. The list shows that Asia World Agricultural Development (Cambodia) Co., Ltd. and Green Island Agricultural Development (Cambodia) Co., Ltd. in Sambo district, Kratie province signed contracts with MAFF on 15 March 2006 for 10,000 hectares and 9,583 hectares, respectively. The former company had their EIA approved through a letter of 16 January 2007 and the latter on 31 January 2007. Tong Min Group Engineering in Kratie district, Kratie province signed an ELC contract with MAFF on 8 December 2008 for 7,465 hectares and has already undertaken an EIA, but it has yet to be approved.

²⁰⁴ National Strategic Development Plan Update, page 38, para. 125.

²⁰⁵ The three communities are: 1) La En village, Teun commune, Koun Mom district, Rattanakiri province, where 121 families (491 people) of Kreung and Tumpoun indigenous communities received land titles on 1,454 hectares of land; 2) La L'eun Kraen village, Ou Chum commune, Ou Chum district, Rattanakiri province, where 94 families (456 people) of Tumpoun indigenous communities received land titles on 920 hectares of land; 3) Andong Kraloeng village, Sen Monorom commune, Ou Reang district, Mondulakiri province, where 114 families (466 people) of Phnong indigenous communities received land titles on 1,425 hectares of land. See also OHCHR/ILO, "3 Communities to Receive Land Title," http://cambodia.ohchr.org/WebDOCs/DocNewsIndex/2011/122011/3_indigenous_communities_to_receive_communal_land_titles_Eng.pdf.

119. At the time of writing, according to the International Labour Organization (ILO), 60 indigenous communities in four provinces (Mondulkiri, Rattanakiri, Kratie, and Kampong Speu) have been recognized by the Ministry of Rural Development as indigenous peoples based on self-identification, 43 indigenous communities have been recognized as legal entities by the Ministry of Interior, and at least 24 indigenous communities have developed their internal rules or are in the process of submitting applications for collective land title to the MLMUPC.²⁰⁶

120. Although these numbers represent positive steps for the protection of the land, culture, language and traditions of these communities, there are many more indigenous peoples across 15 provinces which are in need of support for the protection of their traditionally occupied lands in the face of unregulated development. The granting of concessions on indigenous peoples' land affects the cohesiveness of the community and, therefore their ability to apply for communal land title, in turn affecting their livelihood and ability to gather food and forest products and to practice their cultural rights. One example is the rubber plantation company of Jing Zhong Ri Cambodia on Tumpoun indigenous land in Lumpat district, Rattanakiri province which I have visited (See Annex IV).

121. Moreover, despite relatively robust laws and policies at the national level, this process is entirely dependent on external donor aid and uneven political will applied on a case by case basis. It also requires the availability of field-based civil society organizations in the provinces for implementation. According to information on ongoing projects provided by the ILO, which coordinates the initiatives, while areas with high populations of indigenous peoples such as Mondulkiri, Rattanakiri and Preah Vihear provinces have received the most attention and bilateral and multilateral financial assistance from GIZ, Danida, CIDA, OHCHR, as well as civil society organizations with EU funding, the initiatives are slow to expand to other provinces due to limited capacity and resources.²⁰⁷

122. There are reportedly many challenges with the procedural requirements for registering an indigenous community as a legal entity and applying for collective land title, which is lengthy and over-burdened by bureaucratic processes. While the relevant policy envisages a process "simple in both administrative and technical aspects,"²⁰⁸ in practice, there are currently 11 steps for legal registration and application for title. This includes various procedures involving national, provincial and local authorities in the formal recognition of communities as being indigenous based on self-identification and official appraisal, and development of community by-laws and registration as legal entities. This is followed by the development of internal rules and land demarcation and mapping and the public display of results. On the other hand, a positive aspect of the process is that the procedures are taking place with the participation of a range of stakeholders and with the full involvement of communities, and this is to be praised.

123. Given the lengthy procedure for registration of indigenous land, the May 2011 Inter-ministerial Circular, which provides interim protective measures for indigenous peoples registered with the Ministry of the Interior, is a welcome development. In effect, it should have halted the granting of land concessions on land traditionally occupied by indigenous peoples. For example, the Phnong peoples from at least two villages in Keo Seima district, Mondulkiri province were granted protection by the Mondulkiri provincial governor in 2011 and 2012 while undergoing their application for collective land title. Though the

²⁰⁶ ILO, "State of indigenous community registration in Cambodia," update submitted to development partners, 1 August 2012.

²⁰⁷ There are a small number of projects in Kampong Speu, Stung Treng, and Kratie with proposals to expand further.

²⁰⁸ Policy on Registration and Right to Use of Land of Indigenous Communities in Cambodia, article 4.

requirement for the recognition of indigenous peoples by the Ministry of Interior pertains to only the communities who have benefited from development partner assistance, even so currently 35 communities are eligible. The designation, however, requires supplying elaborate maps of the proposed communal land to the MLMUPC, and the absence of the detailed maps is grounds for rejection. It also depends on the will of the respective provincial governor. Only a handful of communities have been granted this protection in practice.

124. In addition, there is one unfortunate loophole to the Circular, which in practice has further served to ensure its broad non-implementation. Interim protective measures exclude plots that the Government has agreed *in principle* for investment or development prior to the Circular coming into effect in May 2011 (according to the Circular, to avoid any impact on legal private and public ownership of lands that have been legally occupied and agreed in accordance with existing legal provisions). Given the irregular granting of land concessions and successful efforts to circumvent the legal framework, the Circular has had minimal impact.

125. As regards the ongoing support from donors and civil society organizations to assist indigenous communities to organize, many of these initiatives are at risk of being derailed, if not entirely abandoned, due to inconsistent practices associated with the new scheme for land titling, per the 7 May 2012 ELC directive.

126. A subsequent instruction was issued on 4 July 2012 by the Council for Land Policy clarifying that any ongoing process would be honoured.²⁰⁹ A further instruction issued on 26 July 2012 directs provincial authorities not to demarcate the communal land of indigenous peoples as part of the titling scheme.²¹⁰ Nevertheless, indigenous peoples – many of whom are not aware of their rights to communal land – are in some cases reportedly being encouraged to accept private land by local officials involved in the new scheme. Indeed, while all individuals including indigenous people have the right to private land, per article 5 of the Land Law (and have the right to part of the communal land upon leaving the community, per article 27), the current issue is the lack of full information to make informed decisions. For those communities not already organized, informed of their rights to communal land title, and receiving assistance from NGOs, donors and provincial/local authorities to apply for it, the new titling scheme may outpace ongoing indigenous land registration programmes. Parcelling land traditionally used by indigenous peoples into separate pieces of private land could undermine the creation and maintenance of communal lands (which are crucial to protecting collective land areas such as burial grounds and spiritual forests), and may possibly instigate the selling of indigenous land into small plots.

VII. The benefits and negative impacts of land concessions

127. Cambodia as an emerging market has a stated objective of increasing exports and exploiting its natural resources for the purposes of national development. As regards ELCs

²⁰⁹ Council for Land Policy, Instruction No.14 on the implementation of the Royal Government's Directive No.01 Bor.Bor, 07 May 2012 on the strengthening and increasing the effective management of economic land concession in areas of indigenous communities; evergreen forest, semi-evergreen forest, dense forest (Prey Lang); and in areas of national defence bases and historical and cultural heritage sites, 4 July 2012.

²¹⁰ Council for Land Policy, Instruction No.20 on the implementation of the Royal Government's Directive No. 01 Bor.Bor, 07 May 2012 on the strengthening and increasing the effective management of economic land concession in areas of indigenous communities, 26 July 2012.

specifically, the National Strategic Development Plan Update places priority on improving agricultural productivity and diversification.²¹¹ Power generated by Cambodia's proposed hydropower projects will not only generate energy but revenue, and the power will be used for domestic consumption and is also likely to be exported. There are economic and social benefits that land concessions have brought to Cambodia, such as job creation (and therefore a more dynamic local market), tax revenue generated and new roads and other upgrades in infrastructure. Some land concession companies participate in conservation and environmental training programmes. Associated benefits for communities in concession areas include health posts and schools.

128. However, no comprehensive evidence-based report has been officially published about the benefits of land concessions. The amount of new employment and physical investment can often be well below expectations. Moreover, there is no available evidence that revenue generated from land concessions has been used by the Government in concession areas for social and economic development, such as in the health and education sectors or in infrastructure development. Likewise it is difficult to assess if concessions have contributed to alleviating poverty. On the contrary, the Government continues to be heavily dependent on foreign aid. Data and analysis on revenue generated from land concessions and the attendant benefits for the population is an area which needs to be developed further. In contrast, the negative impacts have been well documented.

A. Overall human rights impacts

129. Regrettably, the human rights impact of concessions, especially economic land concessions, continues along the same trends that were documented in the 2004 SRSR and 2007 SRSR reports. The impacts are numerous and many of them I have seen for myself during my missions to Cambodia: the destruction of the environment due to bulldozing, clearing of land and planting of non-native crops and trees; the lack of consultation with local communities, contributing to their marginalization and conflicts with companies and local authorities; the undermining of efforts to register indigenous peoples as legal entities so that they can preserve their culture, language and traditional agricultural practices, and apply for collective land title; encroachment on farm land and areas of cultural and spiritual significance; the loss of traditional livelihoods and the perpetuation of a gross income disparity (rural poor as compared with wealthy concessionaires and those benefiting financially from the concessions); lack of access to clean water and sanitation; forced evictions, displacement and relocation of people from their homes and farm lands, creating difficulties with finding or sustaining employment/ income-generation and access to basic services; sub-standard labour conditions; militarization of land concessions, contributing to intimidation and violence by armed security guards, sometimes members of Royal Cambodian Armed Forces and other times privately employed; and lack of effective remedy or recourse for affected communities. Some of these issues are discussed in greater depth below.

²¹¹ National Strategic Development Plan Update, Chapter 4, page 121.

B. The costs of instability and poor regulation

130. The overwhelming conclusion drawn from petitions, letters, studies, peaceful protests, violent demonstrations, legal complaints, land dispute statistics²¹² and my own direct observations, is that land concessions are only benefiting a minority. The current climate of investment in Cambodia is characterized by a lack of transparency, whereby there is no complete official list of land concessions and business enterprises' operations, and impact assessments are either not undertaken, not publicly available, or undertaken after a concession has been granted or a company has already started operations. Furthermore, it is often unclear who is benefiting financially from land used for urban development, economic and other land concessions, and large scale development projects.

131. This situation serves as fertile ground for business enterprises to be able to avoid human rights "due diligence," or preventing and addressing their human rights impact. The unfortunate result of a lack of transparency and participatory decision-making involving communities which live on or near the land granted for a concession are often unsustainable use of natural resources and persistent protests and demonstrations.

132. Indeed, perhaps the greatest impact that the irregular granting and mismanagement of economic and other land concessions has on the country is to its stability. While many demonstrations are peaceful and can be viewed as a positive contribution to a vibrant society, trends in protests and violent land disputes indicate an increasingly desperate and unhappy population, and communities who have lost faith in their government to exercise appropriate oversight and monitoring over the appropriation of its land and resources. Furthermore, businesses without proper legal and procedural safeguards in place run significant risks which could affect their reputations, legal status, and profits, and in turn could hamper Cambodia's economic growth.

133. There can be a cost benefit to inclusive development planning and preventing conflict.²¹³ The Government should not assume that they are helping businesses by not holding them to account. On the contrary, businesses that do not respect human rights or offer effective remedies when they contribute to adverse impacts run an increasing risk of facing human rights litigation, disruption in operations due to conflicts, or negative publicity by being associated with abuses. These circumstances can affect profit and threaten the sustainability of the business, and lower rates of investment translate into decreased tax revenue for the Government.

134. Since taking up my mandate in 2009, I have received countless reports of protests by local communities who demonstrate specifically against the activities of concession companies. Many companies seem to operate in almost complete secrecy, and it is impossible to trace their operations because they do not maintain an office which is contactable. Even those which are contactable have not responded to my letters asking for information from their side. Engagement with some foreign-owned businesses willing to communicate reveal that many concessionaires do not see their role in Cambodia as necessitating consultation or much involvement with communities, preferring rather to use local authorities and armed forces as intermediaries to handle issues of compensation and

²¹² According to NGO Forum, 2010 data shows that out of 282 land dispute cases, 14 percent or 39 cases were rooted in development projects, especially in the granting of ELCs. NGO Forum, *Statistical Analysis on ELCs*, 2010.

²¹³ See, for example, Rachel Davis and David M. Franks, "The Costs of Conflict Associated with Local Communities in the Extractive Industry," First International Seminar on Social Responsibility in Mining, Santiago, Chile, October 2011.

relocation. The result is a mistrust of company employees, and an ever growing sentiment against foreign-owned businesses.

135. There are also often operational delays which are caused by disputes. For example, regarding the ongoing dispute between the Municipality of Phnom Penh, Shukaku, Inc. (with Inner Mongolia Erdos Hungjun Investment Company, Ltd.) and the Boeung Kak Lake communities, as of the writing of this report, apart from the filling of the lake, no development had taken place since the 2007 lease was granted five years ago. This is undoubtedly related to the persistent disputes, contributing to delayed returns on investment and an embarrassment for the Municipality. There are certainly other examples of delays due to inadequate planning and consultation, resulting in decreased revenue and reputational costs for companies and authorities. The financial and operational costs of land disputes in Cambodia deserve further examination and analysis.

136. In addition, there is an even more damaging reputational risk that an emerging market such as Cambodia is vulnerable to in terms of diverted investment, as international companies seek more stable and predictable business environments due to the perceived “social risks.” Indeed, violence related to land disputes in Cambodia is well-documented. Access to online videos of incidents of shooting and forced evictions has increased since the 2007 SRSR Report, as the use of social media and the ability to record incidents and promptly display them on the internet has developed.²¹⁴ According to the CEO of an ELC in Cambodia, “unlike traditional business risks, where high risk results in a higher required rate of return, social risk tends to be a bipolar event, wherein a company will simply deem a market too risky to consider investment, even at high rates of financial returns. Investment and operations in emerging markets carry higher reputational risks to firms and brands.”²¹⁵

137. Further, the unpredictable granting of land concessions where projects are underway by civil society organizations, community based groups and international donors is hampering prospects for development and prosperity. Some organizations report disruption to long-standing activities related to livelihood and food security, for example, as well as registration of indigenous land. Owing to this climate of poor cooperation with the Government, some donors are reportedly considering diverting their funds away from Cambodia.

C. Forced eviction and relocation

138. As land concessions are granted, the communities living on the land are often subjected to forced eviction, involuntary resettlement or relocation which is poorly planned, if it is planned at all. Eviction and relocation, whether forcible or not, can often increase poverty and cause limited access to income generation and debt; lack of access to water, sanitation, electricity, health services and education; physical and mental health problems;

²¹⁴ See for example the use of force documented in the violent evictions of the Borei Keila community (social land concession) and the Boeung Kak Lake community (real estate development), filmed by Radio Free Asia and non-governmental eviction monitors and posted on YouTube (described in further detail in section VII(C)). Also note the case related to the TTY Company (economic land concession) on 18 January 2012 when armed security guards for TTY Company opened fire on a group of villagers who had gathered to prevent clearing of their farmland by company excavators in Kratie's Snuol district. See the video at Licadho, “Military Shoot Land Protesters in Northeastern Cambodia,” 18 January 2012, <http://licadho-cambodia.org/video.php?perm=29>.

²¹⁵ Phnom Penh Post, Daniel Mitchell, CEO of Grandis Timber, Ltd. an economic land concession for teak plantations in Kampong Speu province, “Corporate Responsibility in Cambodia,” 11 May 2012, <http://www.phnompenhpost.com/index.php/2012051156099/Business/corporate-social-responsibility-in-cambodia.html>.

challenges to realizing civil and political rights (e.g. voting, access to remedy); social stigmatization and disruption to communities and family cohesiveness. Policies, procedures and safeguards which prevent forced eviction are either lacking or not enforced, compensation schemes either mismanaged or inadequate, and relocation efforts are seldom adequately planned with sufficient resources and foresight.

139. Domestic law and international law restrict displacement and relocation, and they provide guidance if relocation is not avoidable.²¹⁶ However, forced eviction and resettlement of local communities due to land concessions or large-scale development and infrastructure projects have often been conducted without due process of law and safeguard for the rights to land and housing of the resident population. In some cases, use of force has been employed to carry out the eviction or relocation, at the behest of both domestic and foreign companies. Furthermore, it is often unclear who is financing evictions.

140. The case that has garnered the most attention both locally and internationally in recent years is the development of Boeung Kak Lake in Phnom Penh, where the Municipality of Phnom Penh granted a long-term 99 year lease over 133 hectares to Shukaku Inc. in association with Inner Mongolia Erdos Hungjun Investment Company for a real estate development project.²¹⁷ Shukaku is directed by Cambodian Senator Lao Meng Khin, who also directs the Pheapimex Group and Wuzhishan LS Group.²¹⁸ The project has affected over 4,000 families, most of whom were forcibly evicted, relocated involuntarily, or who accepted sub-standard compensation under duress. In August 2011 a sub-decree was issued to adjust the size of the Boeung Kak Lake Development,²¹⁹ which provided land title to communities living on a 12.44 hectare stretch of land, a positive development in this long-standing dispute. Nevertheless, this was not as inclusive as it should have been, and some families were subsequently evicted and continue to protest the eviction and relocation. For example, a violent eviction took place on 17 September 2011 on a strip of land bordering the lake which was excluded from this 12.44 hectare area.²²⁰

²¹⁶ The Cambodian Constitution (article 44), the 2001 Land Law (articles 4 and 5) and the 2010 Law on Expropriation (articles 1-7) limit the expropriation of land and manage its terms. Land/property expropriation can only occur in the public interest, with the requirement that fair and just compensation be paid in advance. For international standards, see Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18) and United Nations Committee on Economic, Social and Cultural Rights, General Comment 7 on the right to adequate housing (forced evictions), 1997.

²¹⁷ Contract on the lease of Boeung Kak Lake in Sangkat Srah Chork, Khan Daun Penh, Phnom Penh to develop the commercial, cultural, tourism, residential and resort centre, signed between Cambodian Senator Oknha Lao Meng Khin and Kep Chutema, Governor of the Municipality of Phnom Penh, 6 February 2007.

²¹⁸ Investment Agreement between MAFF and Pheapimex Co., Ltd., signed by Cambodian Senator Oknha Lao Meng Khin, 8 January 2000 for concessions of 176,065 hectares Kampong Chhnang province and of 138,963 hectares in Pursat province. According to letter No. 721 from the Ministry of Commerce, 24 May 2004, Oknha Lao Meng Khin is listed as one of the directors of Wuzhishan LS Group.

²¹⁹ Sub-decree 183 of 11 August 2011.

²²⁰ On 16 September 2011 in Village 22, Boeung Kak Lake, Phnom Penh, five houses (eight families in total) excluded from the 12.44 hectare area were demolished by bulldozer. Negotiations for compensation had not yet been concluded. The eviction was carried out by about one hundred police officers, who beat a protester. The eviction and beating was captured on video. See, Licadho, Video: Boeung Kak Lake Activist Savagely Beaten by Mob of Police Officers during Forced Eviction, 16 September 2011, <http://licadho-cambodia.org/video.php?perm=28>.

141. Two other cases recently brought to my attention where thousands of families are being relocated due to land concessions are the infrastructure development project of the Union Development Group in Koh Kong province and the proposed Lower Sesan 2 hydropower dam²²¹ in Sesan district, Stung Treng province, 1.5 kilometres upstream of the confluence of the Srepok and Sesan rivers. The concession of Union Development Group has already displaced more than 1,000 families from their old villages, and the remaining families are under threat of relocation (see also Annex III). According to environmental impact assessments, the proposed Lower Sesan 2 hydropower dam would affect 4,785 people (1,059 households) from seven villages in four communes due to the creation of the reservoir, and six relocation sites have been proposed for those who will be displaced by the reservoir and construction.²²² The government data projects a slightly lower impact – with 4,620 people affected – and foresees flooding over 34,307 hectares.²²³ Potentially affected communities with whom I had a direct interaction reported that they were not adequately consulted about the impact of the project and the relocation plan, though they did know that the dam will go ahead and they will be relocated somewhere 10 kilometres away from their current village.

142. Another worrying eviction and relocation concerns the Borei Keila community, a social land concession in Phnom Penh.²²⁴ An eviction on 3 January 2012 involved the use of force and poorly planned resettlement resulting in an urgent humanitarian situation.²²⁵ Following the destruction of the homes carried out with a reported excessive use of force, the evicted communities were taken to resettlement sites a significant distance from the city

²²¹ The dam project was approved in January 2011, with construction projected to begin in 2012 and completed by 2016. The dam is projected to be operational by 2017. The capacity of the dam is 400 megawatts, 75 metres high, and up to 6 km long; the size of reservoir is over 340 km². The estimated cost is US\$816 million and power will be generated for Cambodia and for export to Vietnam. See Mark Grimditch, *3S Rivers Under Threat: Understanding New Threats and Challenges from Hydropower Development to Biodiversity and Community Rights in the 3S Rivers Basin*, 3S Rivers Protection Network and International Rivers, April 2012.

²²² Ibid., pp. 28-29. The EIA conducted by Key Consultants Cambodia (KCC) states that many of the proposed resettlement areas are already located in approved forest/land concession areas which will likely be subject to considerable disturbance now and in the future. According to notes prepared by KCC, of the total area proposed for resettlement, over 4,000 hectares is located within the boundaries of forest concessions and reserved land. The reservoir will flood more than 1,200 hectares of agricultural land, which is 24 percent of the agricultural land in Sesan district, and although this will be replaced by land in the resettlement areas, it is acknowledged that this will require forest clearance.

²²³ Ibid., p. 31. In June 2011, the Government clarified that the dam will flood 34,307 ha, the area of which includes 83 ha of residential land, 910 ha of rice farm land, 307 ha of fields, 17,806 ha of state forest land, 10,564 ha of land granted to private firms as land concessions, and 4,638 ha of river/lake areas. The project will impact 4,620 people, and the relocation areas will apparently be provided with electricity supply, and improved livelihoods compared to their previous location.

²²⁴ In early 2003, a land-sharing arrangement was proposed for Borei Keila, which allowed the Phanimex Company to develop part of the area for commercial purposes while providing housing to residents on the remaining land. The contract obliged Phanimex to build 10 apartment buildings for 1,776 residents on two hectares of land, in return for obtaining ownership of an additional 2.6 hectares for commercial development. After constructing only eight buildings, in April 2010 Phanimex renege on the agreement with the approval of the Government, which left approximately 384 Borei Keila families excluded from the original plan. They continued to live informally and under threat of eviction on the site, while seeking intervention and assistance from the Government agencies.

²²⁵ During the incident more than 200 mixed forces (armed police, gendarmerie, and Khan authorities) demolished villagers' homes and moved them to a resettlement site. The eviction was captured on video. See Licadho, "Borei Keila: broken promises in Cambodia," 3 January 2012, <http://licadho-cambodia.org/video.php?perm=28>. Over 100 families who have refused to relocate are reportedly still living in squalor at or around the original site.

centre that were not adequately prepared for the arrival of the families. Lack of potable water (besides two wells), sanitation services, and inadequate housing have been reported at Srah Por Village and Tuol Sambo Village. The eviction and resettlement has resulted in the further impoverishment of the families.

143. The significant efforts by foreign donors to support the MLMUPC and other authorities in systematic and sporadic titling programmes was aimed at securing tenure and in the long-term preventing evictions. Nevertheless, there have been criticisms about the efficacy of these programmes due to the number of households excluded. For example, regarding the Land Management and Administration Program, civil society organizations monitoring the titling scheme claim that despite significant successes in some areas, LMAP did not improve tenure security for segments of the population that are most vulnerable to displacement, as many areas of sought-after land, including that of indigenous peoples, have been systematically excluded from the programme.²²⁶ They point out that a key factor in the design of LMAP is that areas “likely to be disputed” and areas of “unclear status” would not be targeted by the titling system which has in practice resulted in a lack of access to the titling system for households and communities that lie in the path of planned developments (especially in Phnom Penh) or on land concessions, or whose lands have been targeted by well-connected individuals or companies.²²⁷

144. Similar concerns are expressed about the sporadic titling programme, which allows households with possession rights to apply for title on an ad hoc basis. The sporadic titling programme is reportedly plagued by corruption and is often inaccessible due to the substantial official and informal fees required. Consequently, there has been concern that households and communities that have legitimate claims to land are “routinely and arbitrarily denied access to land titling and dispute resolution mechanisms,” undermining land titling programmes’ aim of reducing poverty and promoting tenure security.²²⁸

145. Significant gaps left by the systematic and sporadic titling programmes,²²⁹ the proliferation of granting of land concessions on unregistered or disputed land, and the inaccessibility of the majority of households to dispute resolution procedures (non-judicial and judicial) has perpetuated a climate where evictions persist. Forced evictions are frequently justified by the Government’s claims that those evicted lack documentation or title, are illegally occupying land or “squatting,” or only recently arrived to the land in question (labelled “newcomers” or “opportunistic”). Indeed, although progress has been made in issuing land titles in recent years, Cambodia’s historical legacy means that for many the lack of documentation and land title persists. Internal migration has complicated the process of verifying who is eligible for land title and compensating those communities truly affected or displaced by concession activity. Nevertheless, the continuance of evictions, many of them violent, is not justified by these complexities.

²²⁶ Mark Grimsditch and Nicholas Henderson, *Untitled: Tenure Security and Inequality in the Cambodian Land Sector*, Bridges Across Borders Cambodia, Centre for Housing Rights and Evictions (COHRE), Jesuit Refugee Service, 2009.

²²⁷ *Ibid.*, page 3.

²²⁸ “Housing and Land Rights Issues,” submitted by several Cambodia-based NGOs in consultation with community networks as an Annex to the Parallel Report on land and housing rights issues to the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in its review of Cambodia during its 42nd Session, 4 to 22 May 2009.

²²⁹ *Ibid.*, page 1.

D. Environmental destruction and impacts on livelihood

146. Environmental destruction is a pervasive problem in Cambodia, and not limited to land concession areas. The designation of protected areas was initiated to combat this problem, especially given that forest areas are recognized for their biological diversity and as a key component in climate change mitigation strategies. In the development of agro-industry, however, the most immediate and observable environmental impact is deforestation of large tracts of land due to the clearing of primary forest for the planting of rubber, sugar, acacia, cassava and cashew plantations, for example.

147. There is severe impact on the biodiversity of forest areas. Primary tropical rainforest provides a range of ecosystem services, which all change with deforestation. Cleared areas do not offer the same habitat opportunities as primary forest and represent a crucial degradation of habitat conditions for wildlife species. For example, the Prey Lang forest (the largest primary lowland dry evergreen forest remaining in Cambodia) is now considered endangered. Prey Lang's biodiversity values are reportedly exceptionally high with more than 20 endangered plant species and as many as 27 endangered animal species.²³⁰

148. Illicit logging continues, due to the granting of land concessions but also due to changing migration patterns, despite legislation and efforts by the Government, community patrol groups and development partners to monitor and regulate it.²³¹ In Prey Lang, new roads have damaged areas of the forest, and the roads are also facilitating an influx of illegal loggers and migrants who are illegally cutting timber, clearing forest, and poaching. High value trees, mostly endangered species such as various species of rosewood, have disappeared from some areas.

149. Even specific programmes to combat logging by promoting carbon credit schemes, like the UN-sponsored Reducing Emissions from Deforestation and Forest Degradation (REDD), are challenged by logging on areas designated for conservation. Part of the problem is related to the militarization of community forest areas, whereby the increase of military bases necessitates the clearing of land for the building of new structures, which in some cases has also intensified illicit logging by rogue soldiers and civilians, many of them armed and intimidating to community patrol groups.

150. The development of large hydropower dams are still in a nascent phase, but it is clear that they will have considerable impacts on the environment. As with other land concessions, the EIA process in practice has not been adequate to deal with proposals for and building of large scale dams. Based on initial assessments it is clear that many large hydropower projects will flood expansive areas of land, impacting agricultural and residential land, and many of the proposed sites are in vulnerable forested areas with rich biodiversity and sensitive ecosystems. Impacts on fish migrations and access to forest products threaten to harm the livelihoods of local communities. Indeed, the Government of Cambodia has called for the suspension of the development of the proposed mainstream Xayaburi dam in Laos due to its potential impact on the Mekong river system.²³²

151. Flooding is also a major concern in urban areas, such as in Phnom Penh where poor urban planning, reckless property development, and an inadequate sewage system has

²³⁰ Prey Lang, "The Threat," <http://preylang.com/threats/>.

²³¹ There have also been allegations that an international development partner with long-standing work in Cambodia is complicit in widespread illicit logging in the Central Cardamom Protected Forest. See David Boyle and May Tittihara, "Blind Eye to Forest's Plight," Phnom Penh Post, 26 March 2012.

²³² The Economist, "The Mekong River: Lies, Dams and Statistics," 26 July 2012, <http://www.economist.com/blogs/banyan/2012/07/mekong-river>.

contributed to poor drainage. For example, following the approval of the real estate development project of Shukaku Inc. in 2007 (which later became a joint venture with Erdos Hongjun Property Development Company, Ltd.), in order to develop Boeung Kak Lake into a high-end residential, commercial and tourism complex, the company, with the cooperation of the Municipality of Phnom Penh, began filling the lake with sand in August 2008. This has impacted on drainage and has caused serious flooding in the surrounding villages, with homes submerged in muddy water and sewage, and resulted in many families being forced to move because their homes became uninhabitable. The high level of still water after heavy rains also poses a public health concern and can contribute to the spread of water borne illnesses, malaria and dengue fever.

152. One associated benefit of land concessions has been the building of roads by foreign concessionaires, which has facilitated travel, especially in some remote areas. However, the building of roads has often entailed the clearing of land and the felling of trees. Further, the use of such infrastructure has not been equitable, as many communities living on or near concessions report being denied access to roads within land concessions and forced to take alternative routes.

153. Concerns about the loss of forest cover due to the encroachment of concession areas in protected forests, and the resulting loss of access to forest products by communities is of continuing concern. The 2007 SRSR Report cited the encroachment of concessions upon forested areas and the resulting loss of access to non-timber forest products in relation to over 22 concessions in eight provinces. Since 2007, many more concessions have been granted to private companies in areas where local communities have traditionally used and collected non-timber forest products. For example, CRCK Rubber Development (6,155 hectares), PNT (7,900 hectares), and Thy Nga Development and Investment (6,060 hectare) have been granted concessions to develop rubber plantations within Prey Lang and have reportedly cleared land where indigenous peoples previously tapped resin trees for customary use. Consequently, concession-affected communities are struggling to earn a livelihood and collect enough food.

E. Issues surrounding access to water

154. There is growing concern in recent years among concession-affected communities, environmentalists, governmental representatives, human rights advocates and other development partners related to access to a sufficient amount of safe drinking water for personal and domestic uses (defined as water for drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene).²³³ This is related to both water shortage and water contamination, and there is a concern that these issues will be the subject of increased conflict in and around land concessions granted in protected areas, on indigenous peoples' land, and in areas of primary forest being used for agro-industrial crops, mining, hydropower dams and for other large scale development projects.

155. The 2001 Land Law states that land concessions may not violate transportation ways, including waterways and water reserves, used by people in their daily lives.²³⁴ The 2007 SRSR Report noted a number of concessions that have blocked paths and roads used by villagers to access forested areas and waterways. This violation has continued since, and

²³³ The right to water, defined as the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses was set out in November 2002 by the Committee on Economic, Social and Cultural Rights in General Comment No. 15.

²³⁴ Land Law, 2001, article 58.

there is a growing fear among affected communities of the current and future shortage of water and water pollution caused by the activities of the concessions.

156. Documented water concerns on ELCs include on the sugar plantations of Koh Kong Plantation Company and Koh Kong Sugar Company in Sre Ambel and Botum Sakor districts, Koh Kong province.²³⁵ For example, on the Koh Kong Sugar Plantation, affected communities claim chemical waste from the plantation has poisoned local water sources and killed fish, which is the main source of protein for surrounding communities, and residents have responded by filing legal complaints. Additional concerns regarding water shortages have been expressed in relation to the activities of Union Development Group in Koh Kong's Botum Sakor National Park and on the sugar plantations of the Phnom Penh Sugar Company and Kampong Speu Sugar Company.

157. In addition, in January 2010, on a 9,985 hectare concession belonging to HLH Group and located in the Phnom Oral Wildlife Sanctuary, Oral District, Kampong Speu, producing and processing genetically modified corn, the company diverted water to construct its irrigation system. This area is home to all of Cambodia's remaining indigenous Suy villages. The Suy population claims that HLH has continued diverting water by filling in local streams, which has caused farms to flood. Following protests by the community, HLH modified its practices, but many of the Suy people have stopped using some water for fear that chemical run-offs from HLH's farm have contaminated the water, evidenced by the fact that the water has turned various colours. They have also reported that some livestock have sickened and died, which they believe is related to the contaminated water.

F. Security concerns: deployment of State armed forces and private security guards

158. The deployment of state armed personnel to protect the interests of concession companies has been reported in many cases. Upon commencing operations, companies have often employed State military and/or private security officers to guard the area, many of whom exert intimidation among the local communities, and some of whom are responsible for violence against communities, extortion or blocking of roads through check points.

159. In an increasing number of cases, armed personnel have used live fire in confrontation with villagers who protest against the activities of concession companies from encroaching upon their farmland, forests or areas of cultural or spiritual significance. A number of cases involving the use of live ammunition have been recorded, some of which have resulted in death or serious injury including: in Kratie province, TTY Company; in Rattanakiri province, Jing Zhong Ri Company and Heng Brother Rubber Company; in Kampong Speu province, Phnom Penh Sugar and Kampong Speu Sugar companies; in Bantheay Meanchey and Oddar Meanchey provinces, Cheat Akphiwat Company; and in Battambang province, Mean Sambath Company.²³⁶ In addition, mixed armed forces including gendarmerie were used in Mondulakiri province in May 2012 against villagers whom authorities claimed to have grabbed land belonging to rubber companies Pacific Grand Joint-Stock Company and Pacific Pearl Joint-Stock Company. In the case of concessions in Oddar Meanchey province, the Angkor Sugar, Tonle Sugar Cane and Cane

²³⁵ APRODEV, *Stolen Land Stolen Future, a report on land grabbing in Cambodia*, December 2011.

²³⁶ See, for example, Licadho, "Five Shooting Incidents at Land Dispute Protests in the Past Two Months Show Alarming Increase in Use of Lethal Force," 26 January 2012, <http://www.licadho-cambodia.org/pressrelease.php?perm=269>.

and Sugar Valley companies employed the services of Battalion 42 to set up road blocks and aid in the burning and bulldozing of the village.

160. There have also been some recent high profile cases of shooting resulting in death, for example, the shooting on 26 April 2012 of the outspoken environmental activist and human rights defender, Mr. Chhut Wutty, while gathering evidence of illegal logging in the Central Cardamom Forest in Koh Kong province, and the shooting of a 14 year old girl during a forced eviction and crack down on an alleged “secessionist movement” on 16 May 2012 in Broma village, Chhlong district, Kratie province.

161. In addition, as mentioned earlier, concession companies have also hired armed forces and security guards to set up check points and restrict the use of roads. For example, in the last year guards employed by the Union Development Group in Koh Kong province have prohibited entry into two villages inside the 36,000 hectare concession area in Botum Sakor National Park to communities and representatives of civil society organizations. In addition, although a civilian activity, the implementation of the new land titling scheme implemented following the 7 May 2012 directive on ELCs has been conducted by youth wearing military fatigues commonly worn by the armed forces (without the armed forces insignia), and military transport vehicles have been provided to those recruited to measure land. According to reports from communities in rural areas, this has reportedly fostered confusion and given the impression that the youth hired to demarcate land form part of an arm of the military. In some cases, intimidation has been reported. There have also been concerns that the youth received only limited training – only two days in some cases.

G. Impact on indigenous peoples

162. Land concessions and large scale development projects have had a devastating impact on non-indigenous and indigenous communities alike, but the indigenous communities, whose rights to collective ownership of land are protected under domestic law and international law, are particularly vulnerable. The encroachment of their land is undermining the ability of indigenous communities to register their collective ownership of traditional lands, and enforce their rights to collective land title under the 2001 Land Law.

163. While indigenous peoples are reported to inhabit 15 provinces, two-thirds of the indigenous population of Cambodia is found in the north-eastern provinces of Rattanakiri and Mondulakiri, forming the majority of the population in both provinces. There are already many cases where concessions are being developed directly on indigenous land and oftentimes where there is little land or no land left for the indigenous community to register.²³⁷ The development of agro-industry is threatening the traditional agricultural

²³⁷ For instance, in the case of the Phnong indigenous community in the Bousra commune of Mondulakiri province affected by the ELCs associated with Socfin-KCD (Luxembourg-Cambodia) and Dak Lak Rubber Company. See FIDH report, section 3.3.2. Also, in Rattanakiri, according to a report focusing on the concessions in Ta Veng district (Krong Buk company) and Andong Meas district (Heng Brother, C.R.D. and Veasna Investment at the Western side of the river, and Hong An Ou Ya Dav and 7 Makara Paris on the Eastern side of the river), Chan communities report that the farmland of 47 families is inside the concession area, Ka Nat Thum communities report 30, and Nhang communities report 16 affected families. Dal Veal Leng communities state that large parts of their land is situated in the 1,900 ha concession in their area. Villagers from In village report that the demarcated concession area covers most of their farmland and forest, including multi-crop land used for growing rice, vegetables and their old cashew nut plants. See Andrea Bues, *Increasing Pressure for Land – Implications for Rural Livelihoods in Developing Countries: The Case of Cambodia*, October 2011, available from

systems of indigenous peoples, and therefore their food security. New farming techniques have been introduced on indigenous land, without the consultation of the communities who are most familiar with the areas. While often offered jobs on the new plantations—indeed there is often a shortage of labour in remote areas—many indigenous communities have reportedly not adapted to this new way of farming, are not able to communicate in Khmer or the language of the foreign company, and local tensions related to the expropriation of land and management of the plantations have arisen. Labour conditions are not well-monitored and are reportedly below domestic and international standards.

164. As mentioned earlier, the granting of economic land and other concessions has also undermined the work of development partners, not only those working to assist the communities to register and gain collective titles, but also many development organizations and NGOs who have been trying to help improve the livelihoods of rural communities and indigenous peoples.²³⁸

H. Impact on areas of cultural and spiritual significance

165. The 2004 SRSG Report described the importance of land for rural Cambodia, as it is the foundation for social and cultural organization and livelihood,²³⁹ and the 2007 SRSG Report raised concerns over the encroachment of traditional or spiritual land, which affects both indigenous and non-indigenous communities. Specifically, the 2007 SRSG Report notes the impact the Wuzhishan concession in Mondulhiri province has had on the traditional lands of the Phnong indigenous communities, the impact of the eco-tourism concession granted to New Cosmos Development (Cambodia) on the traditional land and areas of cultural and spiritual importance of the Suy indigenous community in Oral district of Kampong Speu province, and the restriction of monks in the organization of their traditional ceremonies due to the activities of the Pheapimex in Pursat province.²⁴⁰ These concessions are still active (except the New Cosmos Development concession in Oral, which has since ceased operations).

166. In May 2011 a concession was granted to Yeejia Tourism Development (Cambodia) Company for agro-tourism and a hot springs eco-tourism project on Suy indigenous land in Oral district, Kampong Speu, which overlaps with the New Cosmos Development concession.²⁴¹ The hot springs are of cultural and spiritual significance for the Suy. An October 2011 report of the International Federation for Human Rights (FIDH) documents destruction of the spirit forests and burial grounds of the Phnong indigenous peoples in Bousra by Khmer-run bulldozers sub-contracted by Socfin-KCD (a joint venture between Luxembourg-registered Socfinasia and Cambodian Khao Chuly Development for a rubber plantation concession).²⁴² The Jin Zhong Ri company in Rattanakiri province has also cleared some parts of the spirit forest of the Tumpoun indigenous community in Lumphat district. The company stopped their activity only after several protests by the affected indigenous community.

http://www.welthungerhilfe.de/fileadmin/media/pdf/Studien/Cambodia_Increasing_Pressure_final_Nov11.pdf

²³⁸ Ibid. The study shows food insecurity and loss of tradition are potential results of those concessions.

²³⁹ 2004 SRSG Report, page 27.

²⁴⁰ 2007 SRSG Report, page 14.

²⁴¹ Sub-decree No.77, 3 May 2011.

²⁴² FIDH, *Cambodia Land Cleared for Rubber Rights Bulldozed: the impact of rubber plantations by Socfin-KCD on indigenous communities in Bousra, Mondulhiri*, October 2011, section 5.4.3.

167. In addition, the concession granted to Cheat Apiwath Company of 6,000 hectares within the protected Bantheay Chhmar Natural Landscape also covers six temple mounds,²⁴³ and it has affected and encroached upon the farmland belonging to more than 900 families in five villages in Bantheay Chhmar commune, Thmar Puok district, Bantheay Meanchey province and three villages in Ampil commune, Bantheay Ampil district, Oddar Meanchey province. Two among the six temple mounds, Don Moeung and Anlong Prich, have already been bulldozed despite protests by local communities. The Don Moeung temple mound is where the local communities go to pray for peace, prosperity and rainfall in their village every year, in particular during the Khmer New Year.

I. Impact on women and girls

168. The granting of land concessions has particularly impacted women and girls, for example, in areas related to labour, livelihoods, security, and family structure and roles. Concessions contribute to the reduction of land and forest for inhabitants, causing shifts in opportunities for livelihood, and changes in labour and migration patterns. The lack of resources has exposed communities to problems with food security, and many communities have been forced to leave their area in search of work or food. For example, in Kratie, where the majority of ELCs have been granted, men have reportedly moved to other provinces in search of forest products no longer available in their area. Women have reportedly moved to nearby areas, as well as travelled outside of Cambodia to work as labourers in plantations or as domestic workers.²⁴⁴ Often labour opportunities as plantation workers will only be taken up by male communities due to cultural reasons, which could lead to a further marginalisation of women, who are generally more prone to poverty and undernourishment.

169. For both Khmer and indigenous women and girls in remote rural areas, the new presence of “outsiders” (Khmer not from the area and foreigners working for the concession companies), additional concerns are related to safety, in terms of potential robbery, theft and physical violence including rape. This is especially important for women who traditionally go to the forest to collect food and non-timber forest products. Some women have reported now moving in groups. Security concerns also pertain to women who have been evicted and relocated in new environments, often far from the city leading to the frequent absence of husbands and relatives who have returned to the city centre to work.

170. Women and the elderly, as well as children, are often on the frontlines at protests. Women involved in the Boeung Kak Lake dispute have been especially active.²⁴⁵ Previously, it was assumed by communities that women and children are less likely to be targeted by authorities and they are therefore the leaders in demonstrations, but there have been increased cases of violence against women in the context of protests, and of arbitrary detention of female protesters. In recent months, women have taken increasingly drastic public actions in defence of the use of force by gendarmerie. In one incident in March 2012, women representatives of the Boeung Kak Lake community bared their breasts

²⁴³ The temple mounds are Kok Wat, Srey Ruong, Ta Nak, Toul Kreas Momang, Pong Ror, and Damrei Sy Kantel.

²⁴⁴ Margherita Maffii, Supported by the Heinrich Böll Foundation, *Women’s Leadership: A case study in Cambodia*, July 2011, available from http://www.kh.boell.org/downloads/Women_leadership_case_study_report_July_2011_1_FINAL.pdf

²⁴⁵ Amnesty International, *Eviction and resistance in Cambodia: Five women tell their stories*, November 2011.

publicly, ostensibly to avoid apprehension by the police, demonstrating unprecedented desperation.²⁴⁶

171. Women activists involved in land disputes report harassment and intimidation to themselves and their families, which has taken a toll on their family relations and psychological welfare. Many women report feelings of hopelessness and depression, suicidal feelings, and have experienced divorce and separation related to their land disputes and involvements in land claims.

172. Women continue to suffer disproportionately in the eviction and relocation process, as they are responsible both for generating income and also taking care of the family and home.²⁴⁷ Where there are problems with access to basic services at resettlement sites, such as water and sanitation, women and children are often disproportionately affected because they spend more time at the sites. In the case of urban land concessions resulting in eviction, women have lost jobs and sources of livelihood, in some cases reportedly more so than men, especially if relocated far from the city centre. The same work at the relocation site often does not enable them to maintain the equivalent standard of living as in high-density urban areas. With loss of income and the difficulties linked to relocation, drinking alcohol is reportedly more prevalent, which is related to increased domestic tensions and violence in many cases. Unplanned parenthood at resettlement sites is reportedly widespread due to lack of access to family planning services.

173. Women also face difficulties in terms of property registration and land title, reducing their security of tenure and making them more vulnerable to land concessions granted on the land they inhabit. Of the total land titles issued as of June 2010, about 70 percent are reportedly shared properties of couples, 20 percent are owned by women, five percent are owned by men, and another five percent are owned by monasteries.²⁴⁸ Efforts are reportedly underway with the cooperation of the MLMUPC to improve registration of women as property owners, which can be impacted by low levels of official registration of marriage.²⁴⁹ Although more individual titles are registered in the name of women, women who are joint title holders report having issues with property rights in cases of separation, abandonment, domestic violence, multiple marriages and divorce.²⁵⁰ In any of these scenarios, women with low incomes (and their children) are in particularly precarious situations with regards to property rights.

J. Impact on children

174. The overwhelming impact on children is related to the deteriorated livelihoods associated with land tenure insecurity, environmental destruction and land encroachment,

²⁴⁶ Amnesty International, *Cambodia: Imprisoned for speaking out, update Phnom Penh's Boeung Kak Lake*, 2012, section 3.4. Available from: <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/asa230102012en?CMD=VEROBJ&MLKOB=31770732121>.

²⁴⁷ See COHRE, *A survey on the impact of forced eviction on women in Phnom Penh*, November 2011.

²⁴⁸ National Strategic Development Plan Update, Chapter 2, page 34, para. 111. See also Cambodia Land Administration Support Project, *Gender Equality in Systematic Land Registration*, Survey Report, April 2010.

²⁴⁹ Newly married couples reportedly do not always officially register their marriage certificate; couples who have registered their union have to face complex procedures (and fees) for separation whereas couples without marriage certificates can just go to the commune office to declare the “annulment of their union.”

²⁵⁰ Mehrak Mehrvar, Chhay Kim Sore and My Sambath, *Women's Perspectives: A Case Study of Systematic Land Registration in Cambodia*, July 2008, with the support of Gender and Development for Cambodia and Heinrich Böll Stiftung Cambodia.

and forced eviction and resettlement. These challenges affect their access to basic services, such as health and adequate water and sanitation, as well as their educational opportunities. In cases of relocation, children have at times dropped out of school or families had to separate to keep children near the eviction site to finish the school year. In some cases, families also have had to pay informal fees to transfer their children between schools, and the daily informal fees requested by teachers have put an extra burden on families' limited income.

175. There are also issues regarding child labour. For example, one study found that children have at times been pulled out of school in order to work and raise money for their struggling families due to the impacts caused by land concessions.²⁵¹ As with impacts on women and girls described above, the need to earn a livelihood can cause a breakdown in the family structure as parents leave to find work, which may also increase incidents of domestic violence. Unplanned parenthood has resulted in many families having children they cannot afford to feed or send to school. Overall, the impacts of displacement and relocation can be very traumatic for children.

176. Some concession companies have engaged in ad hoc and voluntary initiatives which fit broadly under a corporate social responsibility framework and which can have a positive effect on children's welfare, such as setting up health posts and school rooms in remote rural areas. For example, Socfin-KCD has invested in social projects, renovating the two primary schools in Bousra which offer education in Khmer (but not in the local language, Phnong), paying teachers' salaries and contributing to school infrastructure and materials.²⁵² Grandis Timber, Ltd. in Kampong Speu province has set up an infirmary for labourers and a childcare centre for their children.

VIII. Access to an effective remedy

A. Availability and accessibility of existing non-judicial mechanisms

177. As described above, there are several non-judicial and quasi-judicial mechanisms for dispute resolution, including the various levels of the cadastral system. However, the time-consuming administrative and procedural burden, financial costs associated with submitting a complaint (there are not official fees, as with courts, but transportation, lost wages, and seeking legal assistance, are costly for individuals), and a lack of faith in the system amounts to these mechanisms being used inconsistently. Complainants report that decisions by such bodies are inconsistent, irregular and subject to political interference.

178. There have been some efforts to reduce the number of cases pending. The MLMUPC reports that from 2003 to April 2012, the cadastral system resolved land disputes covering 3,608 hectares (related to 10,881 households), and has attempted to address the backlog of land dispute cases with mobile teams, which have addressed 4,623 cases during that period.²⁵³ The Ministry also reports having conducted training for cadastral and commune officials and civil society partners on the 2001 Land Law and procedures for land dispute resolution and reconciliation. Nevertheless, the new land titling scheme on economic land concessions, forestry concessions and state land is avoiding

²⁵¹ For example, on the Koh Kong Sugar Plantation. See APRODEV, *Stolen Land Stolen Future, a report on land grabbing in Cambodia*, December 2011.

²⁵² FIDH report, section 5.4.4.

²⁵³ Letter from the Minister of Land Management, Urban Planning and Construction, H.E. Im Chunn Lim, to Surya Subedi, 23 May 2012.

demarcation of any land that is currently disputed, thereby not addressing the crux of the problem. Although no land can be registered if ownership is contested, avoiding these areas means that disputes continue, and invariably the weaker party loses out.

179. Cambodia has no independent national human rights institution, although there is an inter-ministerial committee charged with coordinating human rights activities for the Government, the Cambodia Human Rights Committee. The Committee's mandate to monitor and investigate individual and group complaints of human rights violations, including those related to land concessions, is still pending.²⁵⁴ Its capacity is limited, and, while the Committee reviews cases, it does not often investigate cases of land disputes at the field level. Field-based case analysis in cooperation with governmental authorities and legal aid organizations on land disputes has been targeted as an area for further development.²⁵⁵

180. As an alternative, complainants often seek the help of individuals, for example local and provincial authorities (such as commune chiefs and district chiefs), *Oknha* (or tycoons) and other well-connected people, and government authorities who they view as influential. Communities frequently make public pleas to the King and the Prime Minister and his wife for a resolution to their dispute, including submitting petitions and demonstrating in front of the Royal Palace, National Assembly, Senate, Council of Ministers, and the Prime Minister's private residence. Following the exhaustion of other methods with no or unsatisfactory response, there has also been a trend to participate in traditional ceremonies and prayers. Many affected people also submit individual or group petitions to me or come to see me during my visits to the country asking me to intervene.

B. Use of judicial system and criminalization of individuals claiming their land/ land activists

181. The judicial system was the subject of my 2010 report to the United Nations Human Rights Council, and I emphasized some of the main challenges related to the independence of the judiciary and the lack of capacity to handle the case load, particularly with regard to land disputes. I noted that although the Constitution of Cambodia provides for the separation of powers between the three main organs of the State, in practice the distinction between these organs is blurred and the executive branch dominates the judiciary, whether by providing resources to the judiciary or in making appointments to various judicial positions or by other means.²⁵⁶ This remains a key challenge for the country in implementing the rule of law and in promoting and protecting people's rights. Given the interest that the Government has in the granting and management of economic and other land concessions, the judiciary is significantly hampered to adjudicate land disputes. In addition, when pitted against powerful landholding individuals or companies, communities report feeling marginalized due to bribery and political interference, resulting in a complete lack of faith in the system.

182. The judiciary has also increasingly been used to criminalize individuals and communities exercising their right to claim their land. Human rights defenders are similarly targeted, in violation of the rights to freedom of expression and assembly. In a number of

²⁵⁴ A sub-decree outlining their mandate is still pending, and at present most of their activities are related to capacity building on general human rights at the provincial level.

²⁵⁵ Note that the President of the Cambodia Human Rights Committee suggested in a June 2010 meeting to form an ad hoc informal group to examine outstanding land disputes. See A/HRC/15/46, para. 32.

²⁵⁶ Report of the Special Rapporteur on the situation of human rights in Cambodia, A/HRC/15/46, September 2010, para. 41.

cases, criminal charges have been filed against community members and other individuals who were suspected of involvement in complaining against land concessions. NGO Adhoc reports 427 cases in 2011 against communities involved in land conflicts, up from 319 in 2010. Among these individuals are human rights defenders or activists, National Assembly representatives, journalists, lawyers, Sangkat/Commune members, and deputy village chiefs.²⁵⁷ In its public annual report relating to activities from June 2011 to June 2012, OHCHR noted a case load of 182 people who were questioned by the court for land-related claims (some incidents pertained to long-standing land dispute cases), mostly on charges of disinformation, obstruction of public officials with aggravated circumstances, illegal possession of unmovable property (land) belonging to a public legal entity (the State), destruction of property, and encroachment on forest land. In some cases, the charges remain pending in the court and cases are continuously re-activated, while in others people were detained.²⁵⁸

183. For example, during my May 2012 visit to Svay Chreah commune, Snoul district, Kratie province, I learned that four community members affected by the ELCs of Dau Thieng (Cambodia) Rubber Development Company and Dau Thieng (Kratie) Rubber Development Company were summoned to the Kratie provincial court in September 2011. They were called for questioning related to intentional damages committed on 28 April 2011, the date the community members blocked the road to protest the bulldozing of their farmland.²⁵⁹

184. In relation to the chronic land dispute between the Boeung Kak Lake community and Shukaku Inc., the Phnom Penh Court of First Instance, during a hearing of just three and a half hours on 24 May 2012, found 13 women from the Boeung Kak Lake community who had been arrested on 22 May 2012 at a peaceful gathering guilty of obstruction of public officials with aggravating circumstances and illegal possession of unmovable property belonging to a public legal entity.²⁶⁰ They were sentenced to imprisonment for two and half years, which was later reduced on 27 June 2012 by the Court of Appeal to one month and three days (the time they had already spent in detention).

C. Climate for civil society and community action

185. Owing to an uneven application of the relatively well-developed legal framework governing land rights, political interference, and inadequate access to remedies, communities are becoming increasingly frustrated and disillusioned by formal judicial and administrative processes. Demonstrations and protests by affected communities in the capital and provinces are increasing and have become more violent. Concession-affected communities have become increasingly vocal about their complaints, filing petitions and seeking judicial redress at the provincial and national levels, organizing demonstrations in provincial capital cities and in Phnom Penh, forming road blocks and sometimes engaging in violence. For example, owing to the large number of land concessions granted in Snoul

²⁵⁷ Adhoc, *The Report of Land and Housing Rights 2011*, Executive Summary, March 2012.

²⁵⁸ OHCHR Cambodia annual report to the Human Rights Council, September 2012, Land and Housing Rights Unit. All annual reports are available at <http://cambodia.ohchr.org/EN/PagesFiles/Reports/SG-RA-Reports.htm>.

²⁵⁹ Dau Thieng (Cambodia) Rubber Development Co., Ltd. received land concession of 7,972 hectares, and Dau Thieng (Kratie) Rubber Development Co., Ltd. received a land concession of 6,592 hectares. These land concessions has been granted for rubber plantation investment, and the land was determined as state private land through sub-decree, 30 December 2010.

²⁶⁰ Under article 504 of the Criminal Code and under articles 34 and 259 of the 2001 Land Law. Two other activists were also arrested in relation to this case.

district, Kratie province, there have been ongoing protests, especially along national road 76A.²⁶¹ There have also been a number of protests related to various sugar plantations in Koh Kong province.

186. In the last year, there seems to be an increase of mobilized indigenous communities protesting against business activity. For example, the Prey Lang forest movement has been campaigning to protect remaining dense forest, which is the source of food for thousands of inhabitants living in several provinces (Preah Vihear, Kampong Thom, Kratie, and Stung Treng). Their efforts include community forest patrols, travelling by foot or motorbike across vast and remote areas in order to expose and prevent further illegal logging activity. They are also engaged in awareness raising in Phnom Penh and Siem Reap, including through organizing peaceful marches, blessing ceremonies (for example, at Preah Ang Dornng Keu, opposite the Royal Palace), demonstrations, and distributing leaflets to raise awareness about the threats to the forest's natural resources and the communities' livelihoods. In another example, in February 2012, the Tompoun indigenous community in the Lumphat Wildlife Sanctuary took company workers hostage for several hours in protest at the clearing of their farmland (see Annex IV).

187. The response of the authorities, in some cases, has been a crackdown on peaceful demonstrations, community activism and civil society education initiatives. In addition to the disruption of non-violent gatherings, demonstrations, ceremonies, and other awareness raising and outreach activities, in violation of the rights to freedom of expression and assembly, a very disturbing trend has been the interruption and closure of civil society workshops and community meetings, at times with the threat of the use of violence.²⁶² These meetings and workshops often entail much-needed education on Cambodia's domestic legal framework governing land rights, and information on how to file legal claims for land titles. They often involve collaboration with national, local and provincial authorities, and, fill a gap in capacity building not being provided by the Government. Moreover, non-governmental organizations have been instructed by the Government not to intervene in the implementation of the new land titling scheme on economic land concessions, forestry concessions and state land. Harassment and intimidation of individuals involved have been widely reported. The absence of civil society organizations has left many communities, families and individuals unaware of their rights, especially if they are involved in ongoing land disputes or had previously submitted related complaints with judicial or administrative mechanisms.

D. Operational level grievance mechanisms

188. The proliferation of displays of discontent around the country related to land disputes points to inadequate consultation and negotiation with those affected. Ultimately, early and inclusive consultation can address many tensions before they escalate, and can contribute to preventing disputes. The United Nations Guiding Principles on Business and Human Rights promote the use of "operational-level" grievance mechanisms to facilitate addressing disputes early and directly.²⁶³ Such mechanisms are typically administered by

²⁶¹ A selection of news archives on protests related to land disputes in Snuol district are available at <http://www.opendevdevelopmentcambodia.net/tag/snuol-district/>.

²⁶² For a recent example on meetings organized by Adhoc and CCHR, see Kuch Naren, The Cambodia Daily, "Police Clamp Down on Land Rights Meeting," 28 July 2012.

²⁶³ See Guiding Principle 31 for a list of effectiveness criteria for non-judicial grievance mechanisms. According to Guiding Principle 21, in order to ensure their effectiveness, operational level grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source for continuous learning and based on engagement and dialogue.

business enterprises alone or with the collaboration of local authorities and civil society organizations. They should be accessible to individuals and communities who may be adversely impacted by business activities, and should foster trust from the stakeholder groups for whose use they are intended.²⁶⁴ Special care should be taken to address language barriers (especially with the extent of foreign-owned concessions and given that some indigenous peoples do not routinely communicate in Khmer).

189. Some concession companies have set up procedures to deal with local level disputes and complaints, which can be an effective way of directly clarifying misunderstandings and incorrect information and addressing tensions before they escalate. For example, Grandis Timber Ltd. reports having mapped land occupied by communities at the commencement of the concession activities and employed a community relations manager to deal with land and labour disputes.²⁶⁵ However, if set up only late in the dispute, such measures may lose their effectiveness, especially as mistrust may have already developed. For example, a Tripartite Committee was set up in late 2009 by Socfin-KCD in Bousra commune, Monduliri province. The initiative, which in principle is to be welcomed, has been criticized for being an ineffective communication channel to address grievances that had long existed and tensions that had already escalated.²⁶⁶

190. In addition, local efforts at dialogue that do not directly involve company representatives may hamper their potential success. Several foreign companies report relying on the local authorities, often with the presence of armed forces, to negotiate compensation and resettlement. The presence of armed forces during negotiations can be intimidating for communities, and extortion by local authorities and armed forces has been reported. The poor handling of negotiations can lead to mistrust from communities who see foreign companies as exploitative and unwilling to engage, for example Union Development Group in Koh Kong province, among many others.

E. Availability and accessibility of international grievance procedures

191. In recent years, there have been cases of NGO-led complaints on behalf of communities with international State-based grievance mechanisms, including the United Nations human rights treaty-bodies and special procedures.²⁶⁷ No regional grievance mechanism for individual or group human rights complaints exists as part of ASEAN, as the ASEAN Inter-governmental Commission on Human Rights does not have an explicit mandate to examine individual complaints of human rights violations²⁶⁸ and its rules of procedure have not been solidified in this respect.

²⁶⁴ Guiding Principles on Business and Human Rights, 28-31.

²⁶⁵ Grandis Timber Ltd., *Manual of Plantation Establishment Rules*, “Registration of Permanent of Residents and Mapping of Land Occupied,” 21 December 2009.

²⁶⁶ FIDH report, section 5.6.

²⁶⁷ For a list of Cambodia’s status of treaty body reporting, see OHCHR, Human Rights Bodies, “Reporting Status to human rights treaty bodies,” <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>. Individual and group petitions submitted to the treaty bodies are confidential. Individual and group complaints submitted to the United Nations special procedures mechanisms are made publicly available in the annual communications reports should the independent experts/special rapporteurs intervene in writing. For example, there have been multiple communications written and made publicly available regarding the indigenous peoples living in the Prey Lang forest, on the legal framework governing indigenous peoples, and on the Boeung Kak Lake and Borei Keila disputes, among others. See <http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>.

²⁶⁸ AICHR, Terms of Reference, <http://www.asean.org/DOC-TOR-AHRB.pdf>.

192. There is limited knowledge among NGOs and communities in Cambodia about how to access and engage with the complaint procedures which specifically monitor business activity. This is an area for additional development. Complaints alleging irresponsible business practices can be made public concerning any kind of company in any country.²⁶⁹ Some of the multilateral institutions (e.g. the World Bank, European Commission, the IFC, and the Organization for Economic Cooperation and Development²⁷⁰) have institutional grievance procedures for cases that involve projects they fund, but the options are limited. In the absence of formalized mechanisms in the region,²⁷¹ communities have attempted to reach diplomatic missions and international organizations in Phnom Penh, such as the Delegation of the European Union and the Office of the United Nations High Commissioner for Human Rights, as well as foreign embassies, submitting petitions and staging demonstrations.

193. Nevertheless, there have been some notable examples of international advocacy with formalized procedures. Following a complaint in August 2009 prepared by the Centre on Housing Rights and Evictions (COHRE) on behalf of some 4,250 families facing forced eviction from their homes around Boeung Kak Lake, the World Bank Inspection Panel found that the Bank had breached its operational policies by failing to properly design and supervise the Cambodia Land Management and Administration Project. The Inspection Panel found that these failures contributed to the forced eviction of Boeung Kak residents, who were unfairly denied the right to register their land ownership through LMAP before the Government leased the area to a private developer, ultimately leading to their involuntary resettlement and forced eviction.²⁷² Following these findings, the World Bank reportedly attempted to remedy the breaches under LMAP, but the Government ended its project under the loan agreement. The World Bank subsequently suspended funding for all new projects in Cambodia (still in force as of the writing of this report).²⁷³

²⁶⁹ Groups and individuals may submit information on companies' human rights impacts (positive and negative) worldwide to the Business and Human Rights Resource Centre website, and companies' responses are posted as well. See <http://www.business-humanrights.org/Home>. For example, regarding the NGO-led "Clean Sugar Campaign" in Koh Kong province, the Mitr Phol and Ve Wong Company submitted responses, which are publicly available at <http://www.business-humanrights.org/Documents/CambodiaCleanSugar2012>. For a list of mechanisms for submitting complaints, see BASES Wiki, Businesses and society exploring solutions, dispute resolution community, "Mechanisms," <http://baseswiki.org/en/Category:Mechanism>.

²⁷⁰ In the 2000 review process of the OECD Council, governments committed to setting up national contact points (NCPs) to promote the OECD Guidelines on Multinational Enterprises to handle enquiries and complaints (known as "specific instances"), and act as forums for discussion in all matters relating to the Guidelines. Governments have flexibility in the exact form of their national contact point and how it operates. No national contact point exists for Cambodia, but there are contact points for countries whose registered companies operate in Cambodia (for example, France, Republic of Korea, Australia, Belgium, Canada, Japan, United States of America, United Kingdom, among others). For more information, see BASES Wiki, OECD national contact points general information, http://baseswiki.org/en/OECD_National_Contact_Points_General_Information.

²⁷¹ Note that the Asian Development Bank Accountability Mechanism exists but would only be applicable to complaints associated with land concessions in Cambodia if the allegations pertained to an ADB-assisted project. The mechanism excludes complaints not related to ADB actions or omissions. See <http://www.adb.org/site/accountability-mechanism/main>.

²⁷² See COHRE, Land Management and Administration Project World Bank Inspection Panel Complaint, 2010, <http://babcbombodia.org/developmentwatch/lmap/> and Natalie Bugalski and David Pred, "Land Titling in Cambodia: Formalizing Inequality," 2009.

²⁷³ Statement by Annette Dixon, World Bank Country Director, 9 August 2011 (the last loan was reportedly in December 2010), reported by Reuters, <http://www.reuters.com/article/2011/08/09/cambodia-worldbank-idUSL3E7J920D20110809>.

194. In addition, as part of the Cambodian Clean Sugar Campaign, there has been a complaint lodged with the European Commission for Trade regarding the human rights implications of its Everything But Arms (EBA) initiative, a European preferential trade scheme that allows Cambodia-based firms to export sugar and other goods to the EU without import duties and with a guaranteed minimum price. Among the beneficiaries of these trade preferences are companies implicated in land-grabbing and other human rights abuses. The complaint reportedly involved an appeal to the European Trade Commission to take action pursuant to its obligation under Article 17 of the Generalized System of Preferences regulation,²⁷⁴ requesting a thorough investigation of the alleged human rights abuses associated with the industry and, if appropriate, suspension of EBA benefits. Preferential treatment may be withdrawn temporarily for a number of reasons, including “the serious and systematic violation” of human rights set out in the core United Nations human rights and labour conventions, such as the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. Such a decision is made by the Commission on the basis of the conclusions of “the relevant monitoring bodies.”²⁷⁵

195. There has also been use of accredited national human rights institutions (NHRI) abroad,²⁷⁶ albeit limited, to file complaints of human rights violations which have taken place in Cambodia. For example, the Community Legal Education Centre of Cambodia (CLEC) filed a complaint with the National Human Rights Commission of Thailand (NHRC) on 6 January 2010 regarding a long-running dispute between residents of Chikor Leu commune’s villages of Trapeang Kandal, Chhouk and Chikor, Sre Ambel District in Koh Kong province, against Khon Kaen Sugar Industry (a Thai company), which is the majority shareholder of Koh Kong Sugar Industry (KKS,) and Koh Kong Sugar Plantation (KKP).²⁷⁷ The complaint alleges that KSL, through Cambodian subsidiaries KKP and KKS, obtained land concessions in Koh Kong Province in violation of Cambodian law. The complainants based their claim for jurisdiction of the NHRC on KSL’s ownership of KKP and KKS, its control over operations in Cambodia, and its duty to respect human rights wherever it operates. Representing a success in transboundary human rights promotion and protection, the Thai NHRC accepted the complaint and recently issued preliminary findings.²⁷⁸ This is a landmark case for international advocacy in Cambodia, and the use of NHRIs could be explored further for land concession cases.

²⁷⁴ Article 17 (1) of the Generalised System of Preference states that “where the Commission or a Member State receives information that may justify temporary withdrawal and where the Commission or a Member State considers that there are sufficient grounds for an investigation, it shall inform the Generalized Preference Committee and request consultations. The consultations shall take place within one month.”

²⁷⁵ Council Regulation No. 732/2008, article 15.

²⁷⁶ For a list by country of the NHRIs accredited with the International Coordinating Committee see Directory of NHRIs at http://www.nhri.net/default.asp_PID=237_AFD=0.html.

²⁷⁷ KSL owns 70 percent of the Cambodian subsidiary companies, and has effective control over operations in Cambodia and receives 100 percent of the processed sugar from the two Cambodian land concessions. See CLEC press statement, “International Sugar Companies Implicated in Cambodian Land grabbing,” 24 July 2012.

²⁷⁸ See “Findings of the Subcommittee on Civil and Political Rights of the National Human Rights Commission of Thailand on the Koh Kong Sugar Cane Plantation case in Cambodia,” 25 July 2012 (regarding case no. 58/2553), http://www.nhrc.or.th/2012/wb/en/news_detail.php?nid=662&parent_id=1&type=hot.

IX. Conclusion and recommendations

196. At the outset, it should be noted that historical circumstances, including the policies of the Khmer Rouge regime and the widespread destruction and dislocation left in the wake of Cambodia's lengthy civil war, have led to the proliferation of land disputes that the Government is trying to manage. Further, it should also be noted that Cambodia as a developing country may wish to prioritize utilization of its land and natural resources in order for the country to develop and become more prosperous. Nevertheless, I am of the view that land concessions should be granted and managed within a sound legal and policy framework, including with due consideration for and consultation with those who will be affected, and with the sustainable use of natural resources in mind.

197. The majority of the challenges I have identified in this report (analysed in sections V-VIII) derive from a failure to apply the domestic legal framework – that is, the laws, policies and regulations that the Government itself has developed (explained in section III). The granting and management of economic and other land concessions in Cambodia suffer from a lack of transparency and adherence to existing laws. Much of the legal framework on these matters is relatively well developed on paper, but the challenge is with its implementation in practice.

198. Further, a pervasive problem that I have encountered is the uneven access to information, which has contributed to concessions benefiting only a minority, and a proliferation of land related conflicts, which has the potential to contribute to instability. The Government should be rigorous and transparent in the granting and monitoring of land concessions (sections II and VI), especially when negotiating concession agreements with both foreign and national companies, avoiding conflicts of interest, holding concession companies to account by exercising oversight over their activities, and resolving land disputes. Absence of transparency in such matters has bred suspicion of corruption at all levels of the Government and has fuelled resentment on the part of many Cambodian citizens. In spite of visiting Cambodia since 2009 and enjoying a relatively good level of cooperation from the Government in many areas covered under my mandate, I had difficulty in obtaining the necessary official information and in reaching companies holding economic and other land concessions. This lack of access to key information has made it extremely challenging to write a comprehensive report on these issues.

199. Cambodia, as an emerging market, risks developing an international reputation for insecure investment in the land sector and in general. The current development context is characterized by low transparency and uneven access to information, inadequate consultation and participation which is not inclusive, and, in my view, is unsustainable and likely to hamper future national economic growth. Of course, some cases of land concessions seem to have had positive impacts for the people of Cambodia in terms of job creation, stimulation of the local economy, generation of revenue to finance public services, and an overall contribution to national growth. However, the human cost of many concessions has been high, and human rights should be at the heart of the approach to the granting and management of land concessions in order for them to have a positive impact. There are well documented serious and widespread human rights violations associated with land concessions that need to be addressed and remedied. Criminalization of land activists and human rights defenders is particularly worrying, as freedom of expression and assembly is crucial to a well-functioning democratic society.

200. Moreover, throughout my analysis, I have struggled to fully comprehend the benefits of many land concessions that the Government has granted. In general, it is

not clear to what extent the people of Cambodia have actually benefited from land concessions. I am concerned that, despite the Government's commitment to fighting corruption, many concessionaires operate behind a veil of secrecy. Benefits from land concessions, where they exist, need to be quantified and made clearer. If such benefits are not evident, policies and practices around the granting of land concessions need to be modified. The impacts of land concessions should be analysed for both their short- and long-term consequences; indeed, benefits should be genuine and outweigh costs for the majority in order to be considered substantial. I am of the view that the development of Cambodia's land and natural resources could have a positive impact on the lives of all Cambodians if undertaken in a sustainable and equitable manner and within the framework of the human rights obligations of the Government of Cambodia. It is in this constructive spirit that I present these recommendations.

A. Access to information and transparency

201. The Government of Cambodia should make information on land investment, land deals and bidding processes, review of proposals for land concessions (and decision-making criteria for acceptance or denial of the proposal) and future plans (including on commencement of concession activity) available and publicly accessible, including via public display at the provincial level and on official governmental web sites.

202. The Ministry of Agriculture, Forestry and Fisheries should update and complete its list of active economic land concessions and forest concessions with full information, including the progress of the operations, and make it publicly available in a timely manner. The list should include full company profiles, information on leadership, shareholders, parent company, and contact details of companies' local offices (including offices in the home State, where applicable), concession fees paid, and revenue generated from the concession. This information should be available in both English and Khmer.

203. The Ministry of Land Management, Urban Planning and Construction should make available information on the systematic mapping, classification and registration of state public and state private land and create and maintain a state land database. Information on the allocation, management and reclassification of state land should be made available in accordance with the Sub-Decree on State Land Management of 2005. The Ministry of Economy and Finance should cooperate in this process and contribute information regarding re-classification of state properties.

204. The Ministry of Environment should make publicly available an updated and current list of all protected areas, including national parks, wildlife sanctuaries, protected landscapes, multiple use areas, Ramsar sites, biosphere reserves, natural heritage sites, and marine parks, which includes complete information on size, boundary, zone and use of such areas, and the decision making process for modifying or re-classifying protected areas.

205. The process of re-classifying land as state private land and designating protected areas as sustainable use zones should be conducted in an atmosphere of transparency and openness by all concerned actors, including the Ministry of Environment and Ministry of Economy and Finance.

B. Granting of land concessions – consultation and oversight

206. A more coordinated and inclusive system to the granting of land concessions should be considered by the Government and applied by governing authorities, including taking into account national and provincial level planning processes. The approach should be participatory, and the development processes inclusive, in line with the National Strategic Development Plan Update (2009-2013).

207. All relevant government bodies and business enterprises should adhere to the legal requirements for public consultation, for example under the 2005 Sub-Decree on Economic Land Concessions. Such consultations should be meaningful, inclusive and accessible to affected people. Communities on land to be affected by the granting of a land concession should be consulted at the earliest stage on the land use plan and included in the decision-making process. Due consideration should be given to the current livelihood activities of the community and all efforts made to avoid their disruption. Standards of free, prior and informed consent should be rigorously applied when consulting with all indigenous peoples.

208. Greater scrutiny of the history and background of business enterprises and their investment proposals' viability should be implemented by the relevant authorities in order to screen investors before granting a land concession. The review of business proposals should be conducted in a transparent manner, balancing businesses desire for confidentiality of sensitive company data with the need for public oversight. This includes making information available on the bidding process and the timeline agreed upon for concession activities.

209. The re-classification of state public land to state private land should follow the procedures set out in the Constitution and under the 2001 Land Law, and the procedures requiring adoption of legislation by the National Assembly. Until such a law is passed, any re-classification that does occur should be done in an open and transparent manner, with full consideration of the potential impacts of re-classifying a given area, and with proper consultation with the relevant technical agencies and affected people.

210. The Ministry of Agriculture, Forestry and Fisheries and other concerned institutions should ensure that a competitive bidding process for the granting of land concessions is more rigorously and transparently applied, for example per the 2005 Sub-Decree on Economic Land Concessions.

211. The ELC directive (7 May 2012) establishing a moratorium on the granting of new economic land concessions is welcome, but should be fully implemented and maintained until a full review of the concession system is in place. Concessions that are found to be exploitative, inactive, or otherwise violating the conditions of the concession agreement should be cancelled, as per the relevant laws. The review of the current concessions, including the work of the Technical Secretariat on ELCs, should be made publicly available in a timely manner. Upon review, details of those concessions that have been cancelled through this process or were previously cancelled should be made publicly available, including information of how the cancelled land concessions will be managed.

C. Granting of land concessions – environmental and social protection

212. All efforts should be enhanced by the Government to implement the multiple laws, policies and regulations that require environmental and social impact assessment to be carried out *before* the granting of a land concession, including the

1996 Law on Environmental Protection and Natural Resource Management, and the findings made public.

213. The rules and procedures regarding the modification and classification of land in protected areas, especially sustainable use zones, should be adhered to (including by undertaking a scientific study, provided for under the 2008 Protected Areas Law). The results of the assessments and procedures related to modification and classification should be made publicly available.

214. The conditions outlined for granting land concessions in protected areas, per the 2008 Protected Areas Law, should be strictly adhered to. Further, a rigorous review of concessions granted in protected areas should be undertaken, and cancellations implemented in a timely manner. It should also be made clear what legal grounds institutions other than the Ministry of Agriculture, Forestry and Fisheries have for granting concessions and other long-term leases for development on state land.

215. The lands traditionally occupied and used by indigenous peoples should be mapped and demarcated in an expedited manner. No land concessions should be granted on or near the land of indigenous peoples until *after* the processes for recognition and registration and application for communal land title are completed. The 2011 Inter-ministerial Circular on interim protective measures should be rigorously applied for those communities recognized by the Ministry of Rural Development and the Ministry of the Interior, and the process of communal land title should be expedited to avoid further disputes.

216. Due consideration should be given to proposals by concessionaires with enhanced legal and regulatory requirements attached to their investments (such as third party certification schemes and rigorous codes of conduct) which incorporate international standards of environmental and social sustainability.

D. Land concession activity

217. Companies of all sizes, structures and modes of operation, both domestic and foreign, and whether wholly or partly owned by the State, should address their human rights impact by practicing due diligence, including implementing measures to identify, prevent, and mitigate adverse human rights consequences and account for their business activities.

218. In the case of foreign-owned companies, the home States should ensure that representatives of private business enterprises under their jurisdiction do not contribute to adverse human rights impacts by regular monitoring and oversight.

219. Evictions and resettlement should only be used as a last resort, and a moratorium on forced evictions should be in place in relation to all concession activity. In the case of past abuses, all efforts should be made to ensure remediation. When due process has been followed and eviction has been deemed to be legal and in the public interest, affected families should be consulted on how and when the relocation will occur and all efforts made to ensure it is carried out under conditions that adhere to international human rights standards related to adequate housing and fair and just compensation. Additional efforts should be made to re-establish livelihood opportunities.

220. The Royal Cambodian Armed Forces should not be used to protect private interests, and should not be deployed or employed by concession companies, with or without the sanction of the Government. Police, gendarmerie and other relevant

authorities should refrain from using excessive force against concession-affected communities and protesters.

221. The Government should ensure that concession companies do not use or encourage private security guards to engage or use force against concession-affected communities and protesters.

222. Concession companies should take all measures to avoid environmental destruction in their operations, including preventing water contamination, soil deterioration, and unnecessary clearing of land or illicit logging. They should ensure that access to infrastructure, such as new roads on their concessions, is accessible to all surrounding communities and should refrain from blocking transportation within the boundaries of the concession.

223. All efforts should be made by authorities authorized to approve concessions to prevent activities on areas of cultural and spiritual significance, as well as to address (through remediation) adverse impacts that have already occurred. Relevant government ministries, such as the Ministry of Culture and Fine Arts, may intervene to address the impacts.

224. Concession companies – with use of revenue from concession activity – should increase their contributions to the local communities, including by providing social benefits such as health services, educational opportunities and environmental protection measures.

E. Monitoring, research and analysis

225. The Ministry of Economy and Finance and other relevant stakeholders should seek to gather data and conduct analysis on revenue generated from land concessions and the attendant benefits to the population, such as jobs created by land concession companies and contributions to the local market arising from increased income, as part of an evidence-based quantitative study into the concession system. This should be made publicly available.

226. The livelihoods and income generation opportunities of families affected by concessions should be examined and made part of a quantitative and qualitative study, with solutions proposed to address negative financial impacts at the household and community level.

227. Researchers should further examine inadequate planning and consultation which are contributing to disputes related to land concessions with the aim of quantifying (in financial terms) the losses of revenue at the national level.

228. Greater monitoring of land use should be undertaken, and cancellation of land concessions implemented in a timely manner and, where appropriate, land made available for other uses. Cancelled land concessions should be listed by company or province and made publicly available on the relevant ministries' websites, along with reasons for the cancellation.

229. In the case where a land concession has been granted on the land traditionally occupied and used by indigenous peoples, restitution should be provided and the land reinstated where possible, with the opportunity for the communities to register as legal entities and apply for communal land title.

230. After concessions have been granted and become operational, monitoring should continue and the environmental impacts, labour practices and general conduct

of concessionaires evaluated on a regular basis in order to ensure that poor practices can be remedied and violations addressed.

231. The Government should undertake a review of the breach of the 10,000 hectare per person limit on land concessions and the practice of granting contiguous plots of land to affiliates or family members of concessionaires. The Government should re-assert and enforce the legal restriction contained in the 2001 Land Law that concessions totalling over 10,000 hectares may not be granted to the same person, or legal entities effectively under the control of the same person. Where applicable, land concessions in violation of this provision should be cancelled.

F. Dispute resolution

232. Given the seemingly intractable status of long-standing land disputes and the proliferation of new disputes, efforts should be made to enhance effective and legitimate operational level grievance mechanisms, involving communities and their representatives (communities may decide whether civil society organizations should be involved) at the early stages of the granting of a land concession and including them in the planning process.

233. Company representatives should be fully present and engaged in local level dispute resolution mechanisms, so as to reduce anti-business sentiment and to encourage the investment community to directly address their social and environmental impact. Specific efforts should be made to address language barriers, especially with regard to foreign-owned companies and when indigenous communities are involved. As a general rule, the armed forces should not be present during local level negotiations. Armed forces and governing authorities (including provincial and commune officials), as well as communities, should avoid violence.

234. All efforts should be made to bolster the administrative capacity of the cadastral dispute resolution mechanisms and the judiciary to improve the accessibility of communities to remedies related to land disputes. The capacity and independence of the judiciary should be enhanced so that it can command the respect and trust of its constituents. The court system should not be used as a mechanism to criminalize land activists, individuals making claims for their land, human rights defenders and local authorities.

235. All efforts should be employed to monitor land dispute cases in the cadastral dispute resolution mechanisms and the judiciary for instances of conflicts of interest, political interference or corruption involving concession companies. Administrative or judicial officials making decisions based on personal motivation should be barred from any role in adjudication.

G. Review by human rights bodies and other international complaint mechanisms

236. The use of international grievance procedures and mechanisms, as well as national human rights institutions abroad, should be further explored by civil society actors in order to bring complaints of alleged human rights abuses of foreign owned or operated business enterprises implicated in human rights violations in Cambodia (whether the businesses are majority or minority shareholders). The possible role of the ASEAN Inter-Governmental Commission on Human Rights may be further examined.

237. The Cambodian Human Rights Committee could enhance its capacity to monitor, investigate, and report on human rights violations in the context of land concessions. The reports should include recommendations to relevant State institutions and business enterprises and should be made public.

238. In order to enable the further examination of the human rights impact of economic and other land concessions, the Government should extend a standing invitation to the United Nations special procedures mechanisms, or at least invite relevant mandate holders who may be able to provide detailed analysis. Particularly relevant would be the Special Rapporteur on indigenous peoples, the Working Group on business and human rights, and the Special Rapporteurs on the right to food, to adequate housing, to education, on extreme poverty, to safe drinking water and sanitation, and on cultural rights.

239. Considering the proliferation of abuses related to freedom of expression and assembly in the context of land conflicts, additional consideration should be given by human rights bodies, including the United Nations special procedures and treaty bodies, to further explore and document the criminalization of land activists, individuals claiming their rights to land and other human rights defenders working in the land sector, with a view to providing added support and protection.

H. Land rights advocacy and education

240. Given the increasing violations of the rights to freedom of expression and assembly, the Government should take measures to further implement the Law on Peaceful Demonstration, including disseminating and training on its implementation guide. The Ministry of Interior should continue to provide guidance and raise awareness amongst provincial and municipal level authorities, including law enforcement officials, on how to apply the Law on Peaceful Demonstrations in a manner consistent with Cambodia's international human rights obligations.

241. The Government at both national and provincials should ensure that civil society organizations, communities and community-based networks are free to engage in activities related to land rights education, regardless of simultaneous events related to, for example, preparation for and follow up to elections, land titling procedures, and political parties' activities.

242. The Government should engage in supporting communities to be better informed of their rights under the domestic legal framework governing land and the international human rights system. This includes how to submit legal complaints and appeals.

Annex I

Land concessions granted within protected areas established by Royal Decree (1 November 1993) - 30 July 2012 -

1. Natural Parks/National Parks						
Name of protected area	Name of company or project, size and status of land, and land concession purpose				Date of approval/ Authorization	Available official document regarding land concession, designation or reclassification of land area within protected area, or concession contract or lease agreement
	Name	Size (hectares)	Designated land area	Purpose		
1. SORAMARITH KOSAMAK “KIRIROM” Established by: Royal Decree, dated, 1 November, 1993 Land Area: 35,000 ha Province(s): Kampong Speu, Koh Kong Administrator: Ministry of Environment	1. Kirirom Eco-Tourism Investment	609	Sustainable use zone	Eco-Tourism	01 October 2009	Sub-decree 173, dated 01 October 2009 to designate the land as a sustainable use zone, and to grant it to the company.
	2. Yun Khean Minerals (Cambodia) Co., Ltd	290 +10	Sustainable use zone – State private land	Agro-industrial crop	21 March 2011	Sub-decree 51, dated 21 March 2011, referring to the sub-decree 156, date 7 December 2010, to reclassify the designated land as state private land.
	3. Jian King (Cambodia) International Investment Co., Ltd	8,568	Sustainable use zone – State private land	Pine plantation, pine resin collection and processing factory	4 January 2012	-Sub-decree 03, dated 4 January 2012, to designate the land as a sustainable use zone, and to grant it to the company; -Sub-decree 43, dated 16 March 2012, referring to the above sub-decree to reclassify the designated land as state private land.
	4. King Cheng (Cambodia) International Investment Co., Ltd	7,668	Sustainable use zone – State private land	Pine plantation, pine resin collection and processing factory	4 January 2012	-Sub-decree 04, dated 4 January 2012, to designate the land as a sustainable use zone, and to grant it to the company; -Sub-decree 44, dated 16 March 2012, referring to the above sub-decree to reclassify the designated land as state private land.

	5. A2A TOWN (Cambodia) Co., Ltd	2,000	Sustainable use zone – State private land	Eco-tourism	4 January 2012	-Sub-decree 05, dated 4 January 2012, to designate the land as a sustainable use zone, and to grant it to the company; -Sub-decree 45, dated 16 March 2012, referring to the above sub-decree to reclassify the designated land as state private land.
	6. A2A Town (Cambodia) Co., Ltd*	7,668	Sustainable use zone	Eco-tourism town, golf course, and pine plantation and pine resin processing factory	7 June, 2012	Sub-decree 81, dated 7 June, 2012, to designate the land as a sustainable use zone, and to grant it to the company.
2. PREAH MONIVONG (BOKOR) Established by: Royal Decree, dated, 1 November, 1993 Land Area: 140,000 ha Province(s): Kampot, Preah Sihanouk Administrator: Ministry of Environment	1. Camland Co., Ltd	16,000 (5,439 ha related to Bokor National Park)	Protected Area	Oil Palms	26 October, 2000	ELC contract signed with MAFF on 26 October, 2000. Reference: http://www.elc.maff.gov.kh/en/profile/15-kpt/42-kp-camland.html
	2. Y Seng Co., Ltd	2,432	Sustainable use zone	Agro-industrial crop	13 August 2009	Sub-decree 128, dated 13 August 2009 to designate the land as sustainable use zone and to grant it to the company.
	3. Mong Reththy Group Co., Ltd	4,057.75	Sustainable use zone	Eco-tourism and Agri-Tourism	20 August 2009	Sub-decree 133 (Point “A”), dated 20 August 2009 to designate the land as sustainable use zone and grant it to the company.
	4. Virtus Green Plantation (Cambodia) PTE., Ltd	6,718	Sustainable use zone – State private land	Palm Oil, Rubber, Rice, Coffee	22 February 2011	-Sub-decree 31, dated 22 February 2011 to designate the land as sustainable use zone; -Sub-decree 88, dated 20 May 2011, referring to the above sub-decree to reclassify the designated land as state private land.

	5. Sokha Hotel (Kampot and Preah Sihanouk)	18,987	Sustainable use zone – State private land	Development of natural tourism	30 March 2011	-Sub-decree 59, dated 30 March 2011 to designate the land area as a sustainable use zone, and to grant it to the company. -Sub-decree 184, dated 12 August 2011 to reclassify from public state land as state private land and as sustainable use zone within Bokor National Park.
3. KEP Established by: Royal Decree, dated 1 November, 1993 Land Area: 5,000 ha Province(s): Kep Current Land Area: 1,152 ha (the original designated land area was reduced in size by government sub-decree, 138 ANK/BK, dated 25 October 2010) Administrator: Ministry of Environment	N/A					
4. REAM Established by: Royal Decree, dated 1 November, 1993 Land Area: 150,000 ha Province: Preah Sihanouk Administrator: Ministry of Environment	1. Evergreen Success and Asia Resort Co., Ltd	2,377	Sustainable use zone – State private land	Tourism	23 June 2008	Sub-decree 71, dated 23 June 2008 to designate the land as sustainable use zone, and to reclassify the designated land as state private land.
	2. Royal Group	1,408	Sustainable use zone	Eco-Tourism	13 August 2009	-Sub-decree 128, dated 13 August 2009 to designate the land as sustainable use zone and to grant it to the company; -Sub-decree 186, dated 30 October 2009 to reclassify the designated land as state private land.

	3. Vimean Seila Ltd (Preah Sihanouk)	987	Sustainable use zone	Eco-Tourism	18 March 2010	Sub-decree 34, dated 18 March 2010 to designate the land as sustainable use zone and to grant it to the company.
<p>5. BOTUM SAKOR</p> <p>Established by: Royal Decree, dated 1 November, 1993</p> <p>Land Area: 171,250 ha</p> <p>Province: Koh Kong</p> <p>Current Land area: 135,250 ha (the original designated land area was reduced in size by Royal Decree, dated 9 April 2008 which amended the Royal Decree of 1 November 1993, to excise 36,000 ha from the park).</p> <p>Administrator: Ministry of Environment</p>	1. The Green Rich Co., Ltd	60,200	Protected Area	Oil palms, fruit trees and acacia	25 November, 1998	Contract signed with MAFF on 25 November, 1998. Reference: http://www.elc.maff.gov.kh/en/profile/17-kkg/58-kk-greenrich.html
	2. Union Development Group Co., Ltd	36,000	State private land	Commercial and resort zone	9 May 2008	-Royal Decree, dated 9 April 2008 to amend the Royal Decree of 1 November 1993, to excise 36,000 hectares from Botum Sakor National Park's 171,250 hectares, and to reclassify the 36,000 hectares as state private land. -Lease agreement signed between Cambodia government and the company on 9 May 2008.
	3. JW Cambodia Eco Holidays	5,000	Sustainable use zone	Eco-tourism	20 August 2009	Sub-decree 133 (Point "B"), dated 20 August 2009 to designate the land as sustainable use zone and to grant it to the company.
	4. Koh Kong SEZ Co., Ltd	9,977	Sustainable use zone	Agriculture and agro-industrial crop investment	20 August 2009	Sub-decree 133 (Point "C"), dated 20 August 2009 to designate the land as sustainable use zone and to grant it to the company.
	5. L.Y.P Group Co., Ltd	4,100	Sustainable use zone and State private land	Agricultural crop and agro-industrial crop	12 March 2010	-Sub-decree 31, dated 12 March 2010, to designate the land as sustainable use zone, and to grant it to the company; -Sub-decree 38, dated 13 April 2010, to classify 4,100 hectares as state private land and to grant it to the company under the term of lease or concession.
	6. Paradise Investment Co., Ltd	9,137	Sustainable use zone	Agro-industrial crop	1 April 2011	Sub-decree 60, dated 1 April 2011 to designate the land as sustainable use zone, and to grant it to the company.

	7. Sinomexim Investment Co., Ltd	4,280	Sustainable use zone – State private land	Agri-Tourism	22 July 2011	-Sub-decree 171, dated 22 July 2011 to designate the land as sustainable use zone, and to grant it to the company; -Sub-decree 239, dated 28 October 2011, referring to the above sub-decree to reclassify the designated land as state private land.
	8. Union Development Group Co., Ltd	9,100	Sustainable use zone	Water reservoir and hydro-power dam	3 August 2011	Sub-decree 178, dated 3 August 2011 to designate the land as sustainable use zone, and to grant it to the company.
6. PHNOM KOULEN	N/A					
<p>Established by: Royal Decree, dated 1 November, 1993</p> <p>Land Area: 37,500 ha Province(s): Siem Reap</p> <p>Administrator: Ministry of Environment</p>						
7.VIRAK CHEY	1. Try Pheap Import Export Co., Ltd (Taveng district, Rattanakiri)	9,709	Sustainable use zone – State private land	Agro-industrial crops and rubber	9 February 2011	-Sub-decree 25, dated 9 February 2011 to designate the land as a sustainable use zone, and to grant it to the company. -Sub-decree 92, dated 20 May 2011 referring to the above sub-decree to reclassify the designated land as state private land.
<p>Established by: Royal Decree, dated 1 November, 1993</p> <p>Land Area: 332,500 ha Province(s): Rattanakiri, Stung Treng</p>						

Administrator: Ministry of Environment	2. Srun Sovannaphoum Investment Co., Ltd (Taveng district, Rattanakiri)	8,998	Sustainable use zone – State private land	Rubber and eco-tourism, and special economic zone	15 February 2011	-Sub-decree 28, dated 15 February 2011 to designate the land as a sustainable use zone, and to grant it to the company. -Sub-decree 90, dated 20 May 2011, referring to the above sub-decree to reclassify the designated land as state private land.
	3. Noupheap Sophy Investment Co., Ltd	9,000	Sustainable use zone – State private land	Rubber	15 February 2011	-Sub-decree 29, dated 15 February 2011, to designate the area to be the sustainable use land and to grant it to the company -Sub-decree 89, dated 20 May 2011, referring to the above sub-decree to reclassify the designated land as state private land.
	4. Hong Anh Andong Meas Co., Ltd	9,785	Sustainable use zone	Rubber	14 March 2011	Sub-decree 41, dated 14 March 2011 to designate the land as a sustainable use zone, and to grant it to the company.
	5. MDS Thmorda SEZ Co., Ltd	9,146	Sustainable use zone – State private land	Agro-Industrial, rubber	9 February 2011	-Sub-decree 26, dated 9 February 2011 to designate the area to be sustainable use zone, and to grant it to the company. -Sub-decree 91, dated 20 May 2011, referring to the above sub-decree to reclassify the designated land as state private land.
	6. Fu Sheng Hai (Cambodia) Co., Ltd.	7,079	Sustainable use zone – State private land	Agro-industrial (rubber and other crop), natural tourism site, special economic zone and entertainment centre zone	19 May 2011	-Sub-decree 83, date 19 May 2011 to designate the area to be sustainable use zone, and to grant it to the company -Sub-decree 245, dated 28 October 2011, referring to the above sub-decree to reclassify the designated land as state private land.

	7. Jing Zhong Tian Co., Ltd	9,936	Sustainable use zone – State private land	Agro-industrial crop (rubber and other crops), eco-tourism, special economic zone and entertainment centre zone.	19 May 2011	-Sub-decree 84, dated 19 May 2011 to designate the land as a sustainable use zone, and to grant it to the company-Sub-Decree 244, dated 28 October 2011, referring to the above sub-decree to reclassify the land as state private land under the term of lease or concession.
2. Wildlife Preserves/Wildlife Sanctuary						
Name of protected area	Name of company or project, size and status of land, and land concession purpose				Date of approval/ authorization	Available official document regarding land concession, designation or reclassification of land area within protected area, or concession contract or lease agreement
	Name	Size (hectares)	Designated land area	Purpose		
1. PHNOM ORAL Established by: Royal Decree, dated 1 November, 1993 Land Area: 253,750 ha Province(s): Pursat, Kampong Speu, Kampong Chhnang Administrator: Ministry of Environment	1. New Cosmos Development Co., Ltd	1,900	Protected area	Eco-tourism (resort & entertainment facility, including a hot-spring tourism village)	May 2004	Communication letters between the company and the Council for Development of Cambodia and the Council of Ministers during 2003 and the minute of the meeting on the demarcation of the proposed land area, dated 12 May 2004 (see also the 2007 SRSR report, page 14).
	2. HLH Agriculture Cambodia Co., Ltd	9,985	Sustainable use zone- State private land	Agro-industrial crops	30 March 2009	-Sub-decree 48, dated 30 March 2009, to reclassify from public state land of the assigned sustainable use zone of 9,985 ha to state private land; and to grant it to the company.

	3. Great Field (Cambodia) International Ltd	9,059	Sustainable use zone- State private land	Agro-industrial crop	8 January 2010	-Sub-decree 09, dated 8 January 2010 to designate 2 areas within Phnom Oral wildlife sanctuary to be sustainable use zone and to grant them to companies (Great Field, and Yellow Field); -Sub-decree 19, dated 29 January 2010 to expropriate the 9,059 ha, and to reclassify it as state private land, and to grant it as concession or lease to the company.
	4. Yellow Field (Cambodia) International Ltd	8,591	Sustainable use zone- State private land	Agro-industrial crop	8 January 2010	-Sub-decree 09, dated 8 January 2010 to designate 2 areas within Phnom Oral wildlife sanctuary to be sustainable use zone, and to grant them to companies (Great Field, and Yellow Field); -Sub-decree 21, dated 29 January 2010, to expropriate the 8,591 ha within Oral wildlife sanctuary and to reclassify it as state private land for an agro-industrial crops investment/ development under the term of lease or concession.
	5. Kampong Speu Sugar Co., Ltd. (Region 2)	4,700	Sustainable use zone- State private land	Sugarcane Plantations	21 March 2011	-Sub-decree 17, dated 21 March 2011 (Point 4) to designate the area as sustainable use zone and to grant it to the company; -Sub-decree 47, dated 21 March 2011 to reclassify 4,700 ha as state private land and to grant it to the company.

	6. Reththy Kiri Sakor Co., Ltd	1,400	Sustainable use zone- State private land	Agro-industrial crops	6 April 2011	-Sub-decree 64, dated 6 April 2011 to designate the land as a sustainable use zone, and to grant it to the company. ²⁷⁹ -Sub-decree 95, dated 24 May 2011, referring to the above sub-decree and to reclassify the designated land as state private land. ²⁸⁰
	7. YEEJIA Tourism Development (Cambodia) Company ²⁸¹	1,000	Sustainable use zone	Agri-Tourism and hot spring natural tourism	3 May 2011	Sub-decree 77, dated 3 May 2011 to designate the area as a sustainable use zone, and to grant it to the company.
	8. 99 Aphivath Kasekam Co., Ltd	1,400	Sustainable use zone – State private land	Agro-industrial crop	26 January 2012	-Sub-decree 16, dated 26 January 2012 to designate the land as sustainable use zone, and to grant it to the company. The sub-decree also mentioned that “to nullify sub-decree 64, dated 6 April 2011.” ²⁸² -Sub-decree 22, dated 06 February 2012, referring to the above sub-decree to reclassify the designated land as state private land.

²⁷⁹ In the Sub-decree 16, dated 26 January 2012, it is mentioned that this sub-decree is to be nullified.

²⁸⁰ In the Sub-decree 22, dated 6 February 2012, it is mentioned that this sub-decree is to be nullified.

²⁸¹ The granted land concession appears to overlap some part of the land area granted to New Cosmos Development Co. Ltd. of 1,900 hectares in May 2004.

²⁸² Sub-decree 64, dated 6 April 2011, designated 1,400 ha within the Phnom Oral Wildlife Sanctuary as sustainable use zone and granted it to Reththy Kiri Sakor Co., Ltd.

<p>2. PEAM KRASAUB Established by: Royal Decree, dated 1 November, 1993 Land Area: 23,750 ha Province(s): Koh Kong Administrator: Ministry of Environment</p>	N/A					
<p>3. PHNOM SAMKOS Established by: Royal Decree, dated 1 November, 1993 Land Area: 333,750 ha Province(s): Koh Kong, Pursat, Battambang Administrator: Ministry of Environment</p>	<p>1. Kin Sa Apivath Co., Ltd (Pursat province)</p>	1,950	Sustainable use zone	Rubber	9 July 2010	-Sub-decree 65, dated 9 July 2010, to designate the land as sustainable use zone, and to grant it to the company.
	<p>2. MDS Import Export Co., Ltd (Pursat province)</p>	4,402	Sustainable use zone	Rubber	5 August 2010	-Sub-decree 92, dated 5 August 2010, to designate the land as a sustainable use zone, and to grant it to the company.
	<p>3. MDS Import Export Co., Ltd (Pursat province)</p>	1,950	Sustainable use zone – State private land	Rubber	30 December 2010	-Sub-decree 176, dated 30 December 2010, to designate the land as sustainable use zone, and to grant it to the company; -Sub-decree 10, dated 12 January 2011, referring to the above sub-decree to reclassify the designated land as state private land.
<p>4. RONEAM DONSAM Established by: Royal Decree, dated 1 November 1993 Land area: 178,750 ha Current land area: 40,021 ha (the original designated land area was reduced in size by a Royal Decree, dated 29 September, 2003)</p>	<p>1. Leang Hour Hong Import and Export, Agro Industry Development and Processing</p>	8,000	Protected area	Sugar cane and Tapioca	7 June 2000	<p>-Letter No. 334 BS dated 10 August 1999, Ministry of Environment, on agreement and permission for investment of agro-industry plantation on the land area of 5,000 hectares in Roneam Don Sam wildlife protection area, Battambang province. -Signed contract with Ministry of Agriculture, Forestry and Fisheries on 07 June 2000. Reference: http://www.elc.maff.gov.kh/en/profile/9-btb/21-btb-leang.html</p>

Province(s): Battambang and Banteay Meanchey Administrator: Ministry of Environment	2. Soun Mean Sambath Co.; Ltd	4,095	Sustainable use zone	Agro-industrial crop	6 April 2011	-Sub-decree 63, dated 6 April 2011 to designate the area to be sustainable use zone, and to grant it to the company -Sub-decree 94, dated 24 May 2011, referring to the above sub-decree to reclassify the designated land as state private land.
	3. BSC Import Export Co., Ltd*	4,557	Sustainable use zone	Agro-industrial crop	12 June 2012	-Sub-decree 90, dated 12 June, 2012, to designate the land as sustainable use zone, and to grant it to the company.
5. KULEN PROM TEP Established by: Royal Decree, dated 1 November, 1993 Land Area: 402,500 ha Province(s): Preah Vihear, Oddar Meanchey, Siem Reap Administrator: Ministry of Environment	1. Toming Rubber Co., Ltd.	7,750	Sustainable use zone	Agro-industrial crop	14 June 2011	Sub-decree 112, dated 14 June 2011 to designate 2 areas within the protected area as sustainable use zone, and to grant them to the companies (Toming Rubber Co., Ltd and Data Rubber).
	2. Data Rubber (Cambodia) Co., Ltd.	7,700	Sustainable use zone	Agro-industrial crop	14 June 2011	Sub-decree 112, dated 14 June 2011 to designate 2 areas within the protected area as sustainable use zone, and to grant them to the companies (Toming Rubber Co., Ltd and Data Rubber).
	3. Ly Chhoung Construction Import Export	6,000	Sustainable use zone	Agro-industrial crop and rubber	03 June 2011	-Sub-decree 106, dated 03 June 2011 to designate 6,000 ha as sustainable use zone and to grant it to the company; -Sub-decree 63, dated 23 April 2012, to designate 6,000 ha as sustainable use zone, and to grant it to the company. This sub-decree also stated that “to nullify letter of the Council of Ministers, dated 31 May 2011, and to nullify the above government’s sub-decree 106, dated 3 June 2011”.
	4. Serey Mony Transportation & Construction Co., Ltd	6,870	Sustainable use zone	Agro-industrial crop and rubber	15 June 2011	-Sub-decree 114, dated 15 June 2011 to designate the land as sustainable use zone and to grant it to the company.

	5. Hout Meng Rita Co., Ltd	3,000	Sustainable use zone	Agro-industrial crop and rubber	11 August 2011	-Sub-decree 182, dated 11 August 2011 to designate the land as sustainable use zone and to grant it to the company.
	6. Cambodia Dawn Plantation Co., Ltd	9,237	Sustainable use zone	Agro-industrial crop	7 September 2011	-Sub-decree 206, dated 7 September 2011 to designate the area to be sustainable use zone, and to grant it to the company; -Sub-decree 281, dated 13 December 2011, referring to the above sub-decree to reclassify the designated land as state private land.
	7. Excel Caster Plantation Co., Ltd	7,472	Sustainable use zone	Agro-industrial crop and rubber	8 November 2011	-Sub-decree 258, dated 8 November 2011 to designate the land as sustainable use zone and to grant it to the company.
	8. Best Royal (K) Co., Ltd	6,500	Sustainable use zone- State private land	Agro-industrial crop and rubber	23 November 2011	-Sub-decree 263, dated 23 November 2011 to designate the land as sustainable use zone and to grant it to the company; -Sub-decree 07, dated 18 January 2012, referring to the above sub-decree, to reclassify the designated land as state private land.
	9. Tay Ninh Siem Reap Aphivath Caoutchouc Co., Ltd	7,600	Sustainable use zone- State private land	Agro-industrial crop and rubber	23 November 2011	-Sub-decree 264, dated 23 November 2011 to designate the land as sustainable use zone and to grant it to the company. -Sub-decree 06, dated 18 January 2012, referring to the above sub-decree to reclassify the designated land as state private land.
	10. Nature Plantation (K.H) Co., Ltd	9,020	Sustainable use zone - State private land	Agro-industrial crop and rubber	1 December 2011	-Sub-decree 271, dated 1 December 2011 to designate the land as sustainable use zone and to grant it to the company. -Sub-decree 08, dated 18 January 2012, referring to the above sub-decree, to reclassify the designated land as state private land.

	11. B.V.B (Cambodia) Agriculture Development Co., Ltd	3,134	Sustainable use zone – State private land	Agro- industrial crop and rubber	20 January 2012	-Sub-decree 14, dated 20 January 2012 to designate the land as sustainable use zone, and to grant it to the company; -Sub-decree 48, dated 16 March 2012, referring to the above sub-decree, to reclassify the designated land as state private land.
	12. Sok Samnang Development	1,865	Sustainable use zone – State private land	Agro- industrial crop and rubber	13 March 2012	-Sub-decree 39, dated 13 March 2012 to designate the land as sustainable use zone, and to grant it to the company; -Sub-decree 83, dated 7 June 2012, referring to the above sub-decree, to reclassify the designated land as state private land.
	13. Cambodian Blue Haven Ltd	9,129	Sustainable use zone – State private land	Agro- industrial crop	13 March 2012	-Sub-decree 40, dated 13 March 2012 to designate the land as sustainable use zone, and to grant it to the company; -Sub-decree 82, dated 7 June 2012, referring to the above sub-decree to reclassify the designated land as state private land.
	14. Hout Mengrita Co., Ltd	1,195	Sustainable use zone – State private land	Agro- industrial crop and rubber	13 March 2012	-Sub-decree 41, dated 13 March 2012 to designate the land as sustainable use zone, and to grant it to the company; -Sub-decree 84, dated 7 June 2012, referring to the above sub-decree, to reclassify the designated land as state private land.
	15. Lon Agritec Investment Company	4,095	Sustainable use zone – State private land	Agro- industrial crop and rubber	28 March 2012	-Sub-decree 52, dated 28 March 2012, to designate the land as sustainable use zone, and to grant it to the company; -Sub-decree 86, dated 7 June 2012, referring to the above sub-decree, to reclassify the designated land as state private land

	16. Se Hong Plantation Co., Ltd	9,700	Sustainable use zone – State private land	Agro-industrial crop	11 April 2012	-Sub-decree 55, dated 11 April 2012, to designate the land as sustainable use zone, and to grant it to the company; -Sub-decree 87, dated 7 June 2012, referring to the above sub-decree, to reclassify the designated land as state private land.
	17. Khun Sea Import Export*	8,200	Sustainable use zone	Agro-industrial crop and rubber	7 June 2012	-Sub-decree 78, dated 7 June 2012, to designate the land as sustainable use zone, and to grant it to the company.
	18. Metrey Pheap Agro-Industry*	8,520	Sustainable use zone	Agro-industrial crop, rubber and animal raising	12 June 2012	-Sub-decree 92, dated 12 June 2012, to designate the land as sustainable use zone, and to grant it to the company.
<p>6. BOEUNG PER</p> <p>Established by: Royal Decree, dated 1 November, 1993</p> <p>Land Area: 242,500 ha</p> <p>Province(s): Preah Vihear, Kampong Thom</p> <p>Administrator: Ministry of Environment</p>	1. C.R.C.K.2 Aphivath Caout Chouc Co., Ltd.	7,289	Sustainable use zone- State private land	Rubber	24 November 2009	-Sub-decree 199, dated 24 November 2009 to designate the land as sustainable use zone; -Sub-decree 04, dated 8 January 2010 to reclassify the designated land as state private land, and to grant it under the term of concession or lease to the company.
	2. Bean Heak Investment Co., Ltd	4,385	Sustainable use zone- State private land	Rubber and other agro-industrial crops	16 December 2009	-Sub-decree 223, dated 16 December 2009 to designate zone within the protected area as sustainable use zone; -Sub-decree 20, dated 29 January 2010 to expropriate the area, and reclassify it as state private land, and to grant it under the term of concession or lease to the company.
	3. Caoutchouc Mekong Co., Ltd	8,000	Sustainable use zone	Rubber	6 May 2010	Sub-decree 46, dated 6 May 2010, to designate the land as a sustainable use zone and to grant it to the company
	4. C R C K Rubber Development Co., Ltd. II	1,946	Sustainable use zone	Rubber Plantation	25 January 2011	Sub-decree 17, dated 25 January, 2011 (point 2) to designate the area as sustainable use zone, and to grant it to the company

	5. Bean Heach Investment Co., Ltd	5,095	Sustainable use zone- State private land	Rubber	21 March 2011	-Sub-decree 17, dated 21 March 2011(Point 1) to designate the area as sustainable use zone and to grant it to the company. -Sub-decree 50, dated 21 March 2011 to reclassify the designated land as state private land.
	6. Rethy Granite	1,646	Sustainable use zone	Rubber	21 March 2011	-Sub-decree 17, dated 21 March 2011(point 3) to designate the land as a sustainable use zone and to grant it to the company. -Sub-decree 52, dated January 25, 2011to expropriate 1,646 ha within Boeung Per.
	7. Sovannaphum Viniyok Kase-Usahakam	9,913	Sustainable use zone	Rubber Plantation animal raising	3 May 2011	-Sub-decree 76, dated 3 May 2011 to designate the land as a sustainable use zone, and to grant it to the company.
	8. Try Pheap Import & Export Co., Ltd	9,916	Sustainable use zone	Agro-industrial crops and rubber	19 May 2011	-Sub-decree 82, dated 19 May 2011 to designate the land as a sustainable use zone, and to grant it to the company.
	9. Tepi Agro Investment Co., Ltd	1,000	Sustainable use zone	Agro-industrial crop and rubber	2 August 2011	-Sub-decree 177, dated 2 August 2011 to designate the land as a sustainable use zone and to grant it to the company.
	10. Sambath Platinum Co., Ltd	2,496	Sustainable use zone	Agro-industrial crop and rubber	12 August 2011	-Sub-decree 186, dated 12 August 2011 to designate the land as a sustainable use zone, and to grant it to the company.
	11. An Mady Group Co., Ltd	9,993	Sustainable use zone	Rubber and other trees	13 August 2011	-Sub-decree 128, dated 13 August 2011 to designate the land as a sustainable use zone and to grant it to the company.
	12. Sal Sophea Peanich Group Co., Ltd	2,995	Sustainable use zone	Agro-industrial crop and rubber and animal raising	25 August 2011	-Sub-decree 195, dated 25 August 2011, to designate the land as a sustainable use zone and to grant it to the company.

	13. Poa Khouch Development Group Co., Ltd	350	Sustainable use zone	Agro-industrial crop and rubber and animal raising	7 September 2011	-Sub-decree 204, dated 7 September 2011, to designate the land as a sustainable use zone and to grant it to the company.
	14. Srey Panha Development Co., Ltd	588	Sustainable use zone	Agro-industrial crop and rubber	23 September 2011	-Sub-decree 217, dated 23 September 2011 to designate the land as a sustainable use zone and to grant it to the company.
	15. Ram Na Investment Co., Ltd	410	Sustainable use zone	Agro-industrial crop and rubber and animal raising	4 October 2011	-Sub-decree 225, dated 4 October 2011 to designate the land as a sustainable use zone and to grant it to the company.
<p>7. LUMPHAT</p> <p>Established by: Royal Decree, dated 1 November, 1993</p> <p>Land Area: 250,000 ha</p> <p>Province(s): Rattanakiri, Mondulkiri</p> <p>Administrator: Ministry of Environment</p>	1. Daun Penh Agrico Co., Ltd	8,825	Sustainable use zone – State private land	Agro-industrial crop	14 March 2011	-Sub-decree 43, dated 14 March 2011 to designate the land as a sustainable use zone, and to grant it to the company; -Sub-decree 86, dated 20 May 2011 to, referring to the above sub-decree, to reclassify the designated land as state private land.
	2. Mkod Pich Development Agro-Industry	1,950	Sustainable use zone- State private land	Rubber	14 March 2011	-Sub-decree 42, dated 14 March 2011, to designate the land as sustainable use zone, and to grant it to the company; -Sub-decree 87, dated 20 May 2011, referring to the above sub-decree to reclassify the designated land as state private land.
	3. Hoang Ang Andong Meas Co., Ltd	9,470	Sustainable use zone – State private land	Agro-industrial crop and rubber	20 April 2011	-Sub-decree 68, dated 20 April 2011 to designate the land as a sustainable use zone, and to grant it to the company; -Sub-decree 159, dated 18 July 2011, referring to the above sub-decree, to reclassify the designated land as state private land.

	4. Jing Zhong Ri Co. Ltd	9,224	Sustainable use zone – State private land	Rubber	30 May 2011	-Sub-Decree 98, dated 30 May 2011(Point 1) to designate the land as sustainable use zone and to grant it to the company; -Sub-decree 162, dated 22 July 2011, referring to the above sub-decree to reclassify the designated land as state private land.
	5. Hoang Anh Lumphat Co., Ltd	9,173	Sustainable use zone- State private land	Agro-industrial crop and rubber	8 November 2011	-Sub-decree 259, dated 8 November 2011 to designate the land as sustainable use zone and to grant it to the company; -Sub-decree 09, dated 18 January 2012, referring to the above sub-decree, to reclassify the designated land as state private land.
	6. Roath Sokhon Incorporation*	9,000	Sustainable use zone	Agro-industrial crop and rubber	7 June 2012	-Sub-decree 80, dated 7 June 2012, to designate the land as sustainable use zone, and to grant it to the company.
8. PHNOM PRICH Established by: Royal Decree, dated 1 November, 1993 Land Area: 222,500 ha Province: Mondulkiri Administrator: Ministry of Environment	1.Villa Development Co., Ltd	728	Sustainable use zone – State private land	Agro-industrial crops	1 April 2011	-Sub-decree 61, dated 1 April 2011 to designate the land as a sustainable use zone, and to grant it to the company -Sub-decree 93, dated 24 May 2011, referring to the above sub-decree to reclassify the designated land as state private land.
	2.Kasekam Khmer Angkor Co., Ltd	9,160	Sustainable use zone	Agro-industrial crop and rubber	7 September 2011	-Sub-decree 205, dated 7 September 2011 to designate the land as a sustainable use zone, and to grant it to the company.
	3.Investment and Development DAI THANH (Cambodia) J.S.C Ltd	8,708	Sustainable use zone	Agro-industrial crop	30 May 2011	-Sub-Decree 98, dated 30 May 2011 (Point 2) to designate the land as a sustainable use zone, and to grant it to the company.

	4. Investment and Development DAI NAMF (Cambodia) J.S.C Ltd	8,685	Sustainable use zone – State private land	Agro-industrial crop	30 May 2011	-Sub-decree 98, dated 30 May 2011 (Point 3) to designate the land as a sustainable use zone and to grant it to the company; -Sub-decree 165, dated 22 July 2011, referring to the above sub-decree, to reclassify the designated land as state private land.
	5.Master K Son Co., Ltd	6,892	Sustainable use zone – State private land	Rubber and for the development of sustainable wildlife hunting	20 January 2012	-Sub-decree 12, dated 20 January 2012 to designate the land as a sustainable use zone and to grant it to the company; -Sub-decree 46, dated 16 March 2012, referring to the above sub-decree to reclassify the designated land as state private land.
	6. DO WELL PLUS Co., Ltd	3,110	Sustainable use zone – State private land	Agro-industrial crop and rubber	6 February 2012	-Sub-decree 21, dated 6 February 2012, to designate the land as a sustainable use zone, and to grant it to the company; -Sub-decree 47, dated 16 March 2012, referring to the above sub-decree, to reclassify the designated land as state private land.
	7. Lim Royal Joint Stock*	9,068	Sustainable use zone	Agro-industrial crop	7 June 2012	-Sub-decree 79, dated 7 June 2012, to designate the land as a sustainable use zone, and to grant it to the company.
9. PHNOM NAMLEAR Established by: Royal Decree, dated 1 November, 1993 Land Area: 47,500 ha Province(s): Mondulkiri	1.Covyphama Co., Ltd	5,345	Protected area	Rubber plantation	17 February 2008	-ELC contract signed with MAFF on 17 February, 2008 (ELC MAFF list, update as of 8 June 2012).
	2.Varanasi (It is changed from Khouv Cheu Ly (KCD) company)	2,346	Protected area	Rubber	8 October 2008	-ELC contract signed with MAFF on 8 October 2008 (ELC MAFF list, update as of 8 June 2012).

Administrator: Ministry of Environment	3. Sethikula Co., Ltd.	4,273	Sustainable use zone – State private land	Rubber	17 February 2009	-Sub-decree 33, date 17 March 2010 to amend sub-decree 37, dated 17 February 2009 “to amend the term ‘lease’ to the term ‘concession’, and to state that the area of 4273 designate as sustainable use zone within Phnom Namlear wildlife sanctuary; and to grant it as concession to the company
	4. Sithi Agriculture Plantation Co., Ltd ²⁸³	500	Sustainable use zone – State private land	Agro-industrial crops, rubber, and Khleum Chan	9 February 2011	-Sub-decree 24, dated 9 February 2011 to designate the land as a sustainable use zone, and to grant it to the company. -Sub-decree 85, dated 20 May 2011, referring to the above sub-decree, to reclassify the designated land as state private land. However, it is nullified by Sub-decree 28, dated 20 February 2012.
	5. K Peace Investment Cambodia Co., Ltd (Replaced Sithi Agriculture Plantation Co., Ltd)	500	Sustainable use zone – State private land	Agro-industrial crop and rubber	20 January 2012	-Sub-Decree 13, dated 20 January, 2012 to designate the land as a sustainable use zone, and to grant it to the company; -Sub-decree 28, dated 20 February 2012, referring to the above sub-decree to reclassify the designated land as state private land. This sub-decree also stated that “it is to nullify sub-decree 85, dated 20 May 2011”.
	6. Mega First Corporation Berhard (MFCB)	9,477	Sustainable use zone – State private land	Agro-industrial crop, eco-tourism, and special economic zone	18 April 2012	-Sub-decree 61, dated 18 April 2012, to designate the land as a sustainable use zone, and to grant it to the company; -Sub-decree 85, dated 7 June 2012, referring to the above sub-decree to reclassify the designated land as state private land.
	7. LKL Construction Co., Ltd*	5,559	Sustainable use zone	Agro-industrial crop	12 June 2012	-Sub-Decree 91, dated 12 June 2012, to designate the land as a sustainable use zone, and to grant it to the company.

²⁸³ The Sub-decree 28, dated 20 February nullified the sub-decree that granted land to this company. Accordingly, the assigned land now granted to K Peace Investment Cambodia Co., Ltd

<p>10. SNUOL Established by: Royal Decree, dated 1 November, 1993 Land Area: 75,000 ha Province(s): Kratie and Monduliri Administrator: Ministry of Environment</p>	<p>1. Rethy Kiri Seyma Co., Ltd</p>	<p>5,000</p>	<p>Sustainable use zone</p>	<p>Agro-industrial crop and rubber</p>	<p>13 August 2009</p>	<p>-Sub-decree 128, dated 13 August 2009 to designate the land as a sustainable use zone, and to grant it to the company.</p>
<p>2. Hout Sambath Co., Ltd</p>	<p>6,432</p>	<p>Sustainable use zone</p>	<p>Agro-industrial crop and rubber</p>	<p>13 August 2009</p>	<p>-Sub-decree 128, dated 13 August 2009 to designate the land as a sustainable use zone, and to grant it to the company.</p>	
<p>3. E-Invest Co., Ltd</p>	<p>6,450</p>	<p>Sustainable use zone</p>	<p>Rubber</p>	<p>13 August 2009</p>	<p>-Sub-decree 128, dated 13 August 2009 to designate the land as a sustainable use zone, and to grant it to the company.</p>	
<p>4. Samnang Angkor Development Ltd</p>	<p>1,225</p>	<p>Sustainable use zone</p>	<p>Agro-industrial crop</p>	<p>13 August 2009</p>	<p>-Sub-decree 128, dated 13 August 2009 to designate the land as a sustainable use zone, and to grant it to the company.</p>	
<p>5. Viet Nam Kampuchia Economy, Trade And Industry Company Limited(VKETI) Co., Ltd</p>	<p>5,059</p>	<p>Sustainable use zone – State private land</p>	<p>Agro-Industrial, rubber</p>	<p>1 October 2009</p>	<p>-Sub-decree 173, dated 01 October 2009 to designate the land as a sustainable use zone, and to grant it to the company -Sub-decree 07, dated 8 January 2010 to reclassify the designated land as state private land for an agro-industrial crops investment/ development under the term of lease or concession.</p>	
<p>6. Sovann Reachsey Co., Ltd</p>	<p>6,525</p>	<p>Sustainable use zone – State private land</p>	<p>Agro-industrial crop (rubber)</p>	<p>1 October 2009</p>	<p>-Sub-decree 173, dated 01 October 2009 to designate the land as a sustainable use zone and to grant it to the company -Sub-decree 05, dated 8 January 2010 to reclassify the land as state private land and to grant it as concession to the company.</p>	
<p>7. Trach Niem Han Dau Tu-Phat Trien Dai Nam (Cambodia) Co., Ltd</p>	<p>4,468</p>	<p>Sustainable use zone – State private land</p>	<p>Agro-Industrial crops, and rubber and Kleum Chan</p>	<p>1 October 2009</p>	<p>-Sub-decree 173, dated 01 October 2009 to designate the land as a sustainable use zone and to grant it to the company -Sub-decree 06, dated 8 January 2010 to expropriate 4,468ha within the wildlife sanctuary as state private land, in order for an investment and development of the land under the terms of lease or concession.</p>	

	8. Memot rubber plantation Co., Ltd	9,855	Sustainable use zone	Rubber and other agricultural crop	01 October 2009	-Sub-decree 173, dated 01 October 2009 to designate the land as a sustainable use zone and to grant it to the company.
	9.TTY Agricultural Development Co., Ltd	9,780	Sustainable use zone	Rubber and other agricultural crop	01 October 2009	-Sub-decree 173, dated 01 October 2009 to designate the land as a sustainable use zone and to grant it to the company.
	10. Sovann Vuthy Co., Ltd	5,000	Sustainable use zone – State private land	Rubber plantation	6 December 2010	-Sub-decree 154, dated 6 December 2010 to designate the land as a sustainable use zone and to grant it to the company. -Sub-decree 49, dated 21 March 2011 to expropriate 500 ha and to reclassify it as state private land.

3. Protected Landscape/Protected Scenic view areas

Name of protected area	Name of company or project, size and status of land, and land concession purpose				Date of approval/ authorization	Available official document regarding land concession, designation or reclassification of land area within protected area, or concession contract or lease agreement
	Name	Size (hectares)	Designated land area	Purpose		
1. ANGKOR WAT Established by: Royal Decree, dated 1 November, 1993 Land Area: 10,800 ha Province: Siem Reap Administrator: Authority for the Protection and Management of Angkor and the Region of Siem Reap (APSARA)	N/A					

<p>2. BANTEAY CHHMAR Established by: Royal Decree, dated 1 November, 1993</p> <p>Land Area: 81,200 ha Province(s): Banteay Meanchey and Oddar Meanchey</p> <p>Administrator: Ministry of Environment</p>	<p>1.Cheat Akphiwat Co., Ltd (Banteay Meanchey and Oddar Meanchey provinces)</p>	6,000	Sustainable use zone- State private land	Agro-industrial crop	1 February 2011	<ul style="list-style-type: none"> - Sub-decree 22, date 1 February 2011 to designate the land as a sustainable use zone, and to grant it to the company; -Sub-decree 48, dated 21 March 2011 to designate the land within the sustainable use zone of Banteay Chhmar protected landscape as state private land. -Other communication between the company and the Council of Ministers
	<p>2.Chhun Lim Group Co., Ltd</p>	3,000	Sustainable use zone	Agro-industrial crop	8 November 2011	<ul style="list-style-type: none"> -Sub-Decree 257, dated 8 November 2011 to designate 3,000 hectares to be sustainable uses zone; -Sub-Decree 282, dated 13 December 2011, referring to the above sub-decree to reclassify the designated land as state private land.
<p>3. PREAH VIHEAR TEMPLE Established by: Royal Decree, dated 1 November, 1993</p> <p>Land Area: 5,000 ha Province: Preah Vihear</p> <p>Administrator: Ministry of Environment</p>	N/A					

4. Multi-purposes Area/Multiple use area						
Name of protected area	Name of company or project, size and status of land, and land concession purpose				Date of approval/ authorization	Available official document regarding land concession, designation or reclassification of land area within protected area, or concession contract or lease agreement
	Name	Size (hectares)	Designated land area	Purpose		
1. DUNG PENG Established by: Royal Decree, dated 1 November, 1993 Land Area: 27,700 ha Province(s): Koh Kong Administrator: Ministry of Environment	1.Chan Roath Group	63	Sustainable use zone	Fish, shrimp and crab farm	22 February 2011	-Sub-decree 32, dated 22 February 2011, to designate the land as a sustainable use zone, and to grant it to the company.
	2.Lim Lung Co., Ltd	321	Sustainable use zone – State private land	Agro-industrial crop and rubber	13 December 2011	-Sub-decree 278, dated 13 December 2011, to designate the land as a sustainable use zone, and to grant it to the company; -Sub-decree 42, dated 16 March 2012, referring to the above sub-decree, to reclassify the designated land as state private land.
2. SAMLAUT Established by: Royal Decree, dated 1 November, 1993 Land Area: 60,000 ha Province: Battambang Administrator: Ministry of Environment	N/A					

<p>3. Tonle Sap Biosphere Established by: Royal Decree, dated 1 November, 1993</p> <p>Land Area: 316,250 ha Province(s): Kampong Chhnang, Kampong Thom, Siem Reap, Battambang, Pursat</p> <p>Administrator: Ministry of Environment</p>	N/A					
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(*) The companies that have their land concessions authorized by the government through sub-decree following the PM's 7 May 2012 directive on the halt of granting of ELCs.

Annex II

Land concessions granted in areas inhabited and/or traditionally used by indigenous communities - 30 July 2012 -

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
Battambang Province							
1	Samlaut district	Rath Sambath	5,200	Rubber	3 April 2009	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/9-btb/22-btb-rath.html)	Por
Kampong Speu Province							
1	Oral district	New Cosmos Development Co., Ltd	1,900	Eco-tourism (resort & entertainment facility, including a hot-spring tourism village)	May 2004	Communication letters between the company and the Council for Development of Cambodia and the Council of Ministers during 2003 and the minute of the meeting on the demarcation of the proposed land area, dated 12 May 2004 (see also the 2007 SRSG report, page 14)	Souy
2	Oral district	HLH Agriculture Cambodia Co., Ltd	9,985	Agro-industrial crop	30 March 2009	Sub-decree 48, dated 30 March 2009 to reclassify as state private land from public state land of the designated sustainable use zone of 9,985 ha within Oral wildlife Sanctuary and to grant it to the company.	Souy

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
3	Oral district	YEEJIA Tourism Development (Cambodia) ²⁸⁴	1,000	Agri-tourism & hot spring eco-tourism	3 May 2011	Sub-decree 77, dated 3 May 2011 to designate the area as a sustainable use zone, and to grant it to the company.	Souy
Kampong Thom Province							
1	Prasat Balaing district	Kol Veasna Investment Co., Ltd (changed from An Mady Group)	9,863	Acacia tree	9 May 2005	ELC contract signed with MAFF (see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf ; or http://www.elc.maff.gov.kh/en/profile/14-ktm/35-kpt-an-mardy.html)	Kouy
2	Sandan district	C R C K Rubber Development Co., Ltd	6,155	Rubber plantation	5 May 2010	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/14-ktm/103-ktm-crck.html)	Kouy
Kratie Province							
1	Sambo district,	Global Agricultural Development (Cambodia) Co., Ltd	9,800	Tectona replantation and construction of processing factory	15 March 2006	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/16-krt/46-kratie-global.html)	Phnong and Mil

²⁸⁴ The land concession granted to YEEJIA Tourism Development (Cambodia) appears to overlap some part of the land area granted to New Cosmos Development Co. Ltd. of 1,900 hectares in May 2004.

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
2	Sambo district	Asia World Agricultural Development (Cambodia) Co., Ltd	10,000	Tectona replantation and construction of processing factory	15 March 2006	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/16-krt/47-kratie-asiaworld.html)	Phnong and Mil
3	Sambo district	Green Island Agricultural Development (Cambodia) Co., Ltd	9,583	Tectona replantation and construction of processing factory	15 March 2006	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/16-krt/45-kratie-greenisland.html)	Phnong and Mil
4	Sambo district	Plantation Agricultural Development (Cambodia) Limited	9,214	Pistacia Chinasis Bunge and other trees plantation	11 August 2006	ELC contract signed with MAFF (see also: the 2007 SRSG report, page 25)	Phnong and Mil
5	Sambo district	Great Asset Agricultural Development (Cambodia) Limited	8,985	Pistacia Chinasis Bunge and other trees plantation	11 August 2006	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/16-krt/48-kratie-greatasset.html)	Phnong and Mil
6	Sambo district	Great Wonder Agricultural Development (Cambodia) Limited	9,231	Pistacia Chinasis Bunge and other trees plantation	11 August 2006	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/16-krt/49-kratie-greatwonder.html)	Phnong and Mil
7	Sambo district, O'kreang commune	Central First Company Ltd	7,000	Rubber	25 September 2009	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/16-krt/55-kratie-central.html)	Phnong
8	Sambo district, Rolus Meanchey commune and Sre Chi commune	China Dynamic Investment	6,600	Rubber and acacia	29 January 2010	ELC contract signed with MAFF (see also: MAFF list of ELC, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Phnong and Mil

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
9	Snuol district, Sre Cha commune	CIV	769	Rubber	27 May 2008	ELC contract signed with Kratie Provincial Governor's office.	Stieng (250 families)
10	Snuol district, Snuol commune, Sre Char commune and Khseum commune	Growth West Building Trading	9,996	Rubber, teak and acacia	17 July 2008	ELC contract signed with MAFF (see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Stieng
11	Snuol district	Sovann Reachsey Co., Ltd	6,525	Rubber	1 October 2009	-Sub-decree 173, dated 1 October 2009 to designate the land as sustainable use zone within Snuol Wildlife sanctuary, and to grant it to the company; -Sub-decree 05, dated 08 January 2010, to reclassify the land as state private land.	Phnong
Mondulkiri Province							
1	Koh Nhek district, Royor commune	Unigreen Resource Co., Ltd	8,000	Rubber	03 April 2009	ELC contract signed with MAFF (see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Phnong
2	Koh Nhek district, Royor commune	Pacific Grand Joint-Stock Company Ltd	9,656	Rubber	9 September 2011	ELC contract signed with MAFF (see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Phnong

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
3	Koh Nhek, Royor commune	Pacific Pearl Joint-Stock Company Ltd	9,614	Rubber	9 September 2011	ELC contract signed with MAFF (see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Phnong
4	Koh Nhek, Royor commune	Pacific Lotus Yory Stock Company Ltd	9,014	Rubber and other industrial crop	9 September, 2011	ELC contract signed with MAFF (see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Phnong
5	Koh Nhek, Royor commune	Pacific Pride Joint-Stock Company Ltd	9,773	Rubber	9 September, 2011	ELC contract signed with MAFF (see also: MAFF list of ELC, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Phnong
6	Koh Nhek district, Royor commune	Mondul Agri-Resource Co., Ltd	9,100	Rubber	25 September 2009	ELC contract signed with MAFF (see also http://www.elc.maff.gov.kh/en/profile/18-mdk/68-mkiri-mondul.html)	Phnong
7	Keo Seima district	Tai Nam BPM Ltd	7,600	Plantation of cassava, rubber, cashew and construction of processing factory	18 September 2006	ELC contract signed with MAFF (see also the 2007 SRSG report, page 27)	Phnong

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
8	Keo Seima district, Sre Khtum commune	Rithy Kiriseima	5,000	Rubber	13 August 2009	Sub-decree 128, dated 13 August 2009 to designate the land as sustainable use zone within Snuol Wildlife Sanctuary, and to grant it to the company.	Phnong
9	Keo Seima district, Chong Plas commune	Mo Hy Pa Masu Orn Kampuchea Co., Ltd	7,800	Rubber	29 January 2010	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/18-mdk/105-mkiri-mohipa.html)	Phnong and Stieng
10	Keo Seima district, Chong Plas commune and, and Pech Chreada district, Pou Chry commune	Land and Developing (Cambodia)	7,000	Rubber and acacia	8 December 2008	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/18-mdk/62-mkiri-land.html)	Phnong and Stieng
11	Keo Seima district, Chong Plas and Pech Chreada district, Pou Chry commune	Seang Long Green Land Investment (Cambodia)	7,000	Rubber and acacia	8 December 2009	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/18-mdk/64-mkiri-seanglong.html)	Phnong and Stieng
12	Keo Seima district Chong Plas and Pech Chreada district, Pou Chry commune	Agro Forestry Research	7,000	Rubber and acacia	8 December 2009	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/18-mdk/63-mkiri-agroforestry.html)	Phnong
13	Keo Seima district	Kasekam Khmer Angkor Co., Ltd	9,160	Rubber and other agro-industrial crop	7 September 2011	Sub-decree 205, dated 7 September 2011, to designate the area as sustainable use zone within Phnom Prich wildlife sanctuary, and to grant it to the company.	Phnong

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
14	Keo Seima district and Pech Chreada district	Investment and Development DAI THANH (Cambodia) J.S.C Ltd	8,708	Agro-industrial crop	30 May 2011	Sub-Decree 98 (point 2), dated 30 May 2011, to designate the land as sustainable use zone within Phnom Prich Wildlife sanctuary, and to grant it to the company.	Phnong and Kouy
15	Keo Seima district and Pech Chreada district	Investment and Development DAI NAM (Cambodia) J.S.C Ltd	8,685	Agro-industrial crop	30 May 2011	-Sub-decree 98 (point 3), dated 30 May 2011 to designate the land as sustainable use zone within Phnom Prich wildlife sanctuary and to grant it to the company; -Sub-decree 165, dated 22 July 2011 to reclassify the land as state private land.	Phnong and Kouy
16	O'Reang district, and Sen Monorum district-Pu Tru, Pu Taing	Wuzishan LS Group Co., Ltd	10,000	Teak	30 December 2005	ELC Contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/18-mdk/61-mkiri-wuzishan.html)	Phnong
17	O'Reang district	Mega First Corporation Berhard (MFCB)	9,477	Agro-industrial crop, eco-tourism, and special economic zone	18 April 2012	-Sub-decree 61, dated 18 April 2012 to designate the land as sustainable use zone within Phnom Namlear wildlife sanctuary, and to grant it to the company; -Sub-decree 85, dated 7 June 2012, referring to the above sub-decree to reclassify the land as state private land.	Phnong

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
18	O'Reang district and Sen Monorom district	Huor Ling (Cambodia) International Insurance	8,400	Pine	5 May 2010	ELC contract signed with MAFF (See also: http://www.elc.maff.gov.kh/en/profile/18-mdk/106-mkiri-huoling.html)	Phnong
19	Peach Chreada district, Krantes commune, and Sre Ampum Commune	D.T.C (Group)	4,000	Rubber	18 March 2009	ELC contract signed with MAFF (See also: http://www.elc.maff.gov.kh/en/profile/18-mdk/65-mkiri-dtc.html)	Phnong
20	Peach Chreada district, Bousra commune,	Varanazy (changed from Khov Cheuly KCD, which signed ELC contract on 8 October 2008)	2,346	Rubber	3 April 2009	ELC contract signed with MAFF (See also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Phnong
21	Peach Chreada district, Bousra commune	Sethikula Co., Ltd	4,273	Rubber	17 February 2009	Sub-decree 37, dated 17 February 2009 to amend the term 'lease' to the term 'concession', and it stated that the area of 4,273 ha is designated as sustainable use zone within Phnom Namlear wildlife sanctuary and to grant it to the company.	Phong
22	Peach Chreada district	Covyphama Co., Ltd	5,345	Rubber	17 February 2008	ELC contract signed with MAFF (See also: http://www.elc.maff.gov.kh/en/profile/18-mdk/67-mkiri-covyphama.html)	Phnong

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
23	Peach Chreada district	Villa Development Co., Ltd	728	Agro-industrial crop	1 April 2011	-Sub-decree 61, dated 1 April 2011 to designate the area as sustainable use zone within Phnom Prich wildlife sanctuary, and to grant it to the company; -Sub-decree 93, dated 24 May 2011, to reclassify the land as state private land.	Phnong
24	Peach Chreada district, Bousra commune	K Peace Investment Cambodia Co., Ltd (Formerly Sithi Agriculture Plantation Co., Ltd)	500	Rubber	20 January 2012	-Sub-Decree 13, dated 20 January 2012 to designate the land as a sustainable use zone within Phnom Namlear wildlife sanctuary, and to grant it to the company; -Sub-decree 28, dated 20 February 2012, referring to the above sub-decree to reclassify the land as state private land.	Phnong
25	Pech Chreada district, O'Reang district and Koh Nhek district	Dak Lak Mondulkiri Rubber Development	4,162	Rubber	04 July 2008	ELC contract signed with MAFF (See also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Phnong
26	Phnom Namlear Wildlife Sanctuary	LKL Construction Co., Ltd	5,559	Agro-industrial crop	12 June 2012	Sub-Decree 91, dated 12 June 2012 to designate the land as sustainable use zone within Phnom Namlear Wildlife sanctuary, and to grant it to the company	Phnong

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
27	Phnom Prich Wildlife Sanctuary	Lim Royal Joint Stock	9,068	Agro-industrial crop	7 June 2012	Sub-decree 79, dated 7 June 2012 to designate the land as a sustainable use zone within Phnom Prich wildlife sanctuary, and to grant it to the company.	Phnong
28	Phnom Prich Wildlife Sanctuary	Master K Son Co., Ltd	6,892	Rubber and for the development of sustainable wildlife hunting	20 January 2012	-Sub-decree 12, dated 20 January 2012 to designate the land as a sustainable use zone within Phnom Prich wildlife sanctuary and to grant it to the company; -Sub-decree 46, dated 16 March 2012 to reclassify the land as state private land.	Phnong
Oddar Meanchey Province							
1	Samraong district	Real Green Co., Ltd	8,000	Casava and other agro-industrial crop and construction of processing factory.	6 September 2006	ELC Contract signed with MAFF (See also the 2007 SRSG report, page 30)	Kouy
2	Samraong district	Crystal Agro Company Limited	8,000	Casava and other agro-industrial crop and construction of processing factory.	17 July 2006	ELC Contract signed with MAFF (See also the 2007 SRSG report, page 10 and 30)	Kouy

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
3	Kulen Prom Tep	Best Royal (K) Co., Ltd	6,500	Rubber	23 November 2011	-Sub-decree 263, 23 November 2011 to designate the land as a sustainable use zone within Kulen Prom Tep wildlife sanctuary and to grant it to the company; -Sub-decree 07, dated 18 January 2012, referring to the above sub-decree, reclassify the land as state private land.	Kouy
Preah Vihear Province							
1	Beng Per Wildlife Sanctuary	Sovannaphum Viniyok Kase-Usahakam	9,913	Rubber plantation and animal raising	3 May 2011	Sub-decree 76, dated 3 May 2011 to designate the area as a sustainable use zone within Beng Per wildlife sanctuary, and to grant it to the company.	Kouy
2	Beng Per Wildlife Sanctuary	Try Pheap Import and Export Co., Ltd	9,916	Agro-industrial crops and rubber	19 May 2011	Sub-decree 82, 19 May 2011 to designate the area as a sustainable use zone within Peng Per wildlife sanctuary, and to grant it to the company.	Kouy
3	Beng Per Wildlife Sanctuary	Rethy Granite	1,646	Rubber	21 March 2011	-Sub-decree 17, dated 21 March 2011 to designate the land as sustainable use zone and to grant it to the company; -Sub-decree 52, dated 25 January 2011 to reclassify the area as state private land.	Kouy

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
4	Beng Per Wildlife Sanctuary	An Mady Group Co., Ltd	9,993	Rubber and other trees	13 August 2011	Sub-decree 128, dated 13 August 2011 to designate the area as a sustainable use zone and to grant it to the company.	Kouy
5	Beng Per Wildlife Sanctuary	Poa Khouch Development Group Co., Ltd	350	Agro-industrial crop and rubber and animal raising	7 September 2011	Sub-decree 204, dated 7 September 2011 to designate the land as a sustainable use zone and to grant it to the company	Kouy
6	Beng Per Wildlife Sanctuary	Ram Na Investment Co., Ltd	410	Agro-industrial crop and rubber and animal raising	4 October 2011	Sub-decree 225, dated 4 October 2011 to designate the land as a sustainable use zone and to grant it to the company	Kouy
7	Beng Per Wildlife Sanctuary	Srey Panha Development Co., Ltd	588	Agro-industrial crop and rubber	23 September 2011	Sub-decree 217, dated 23 September 2011 to designate the land as a sustainable use zone and to grant it to the company	Kouy
8	Chheb district	Heng Nong (Cambodia) International Co., Ltd	6,488	Acacia and sugar cane	8 November 2011	ELC contract signed with MAFF(See also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Kouy
9	Chheb district	Heng Rui (Cambodia) International Co., Ltd	9,119	Acacia and sugar cane	8 November 2011	ELC contract signed with MAFF(See also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Kouy

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
10	Chheb district	Heng Yue (Cambodia) International Co., Ltd	8,959	Acacia and sugar cane	8 November 2011	ELC contract signed with MAFF(See also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Kouy
11	Chheb district	Rui Feng (Cambodia) International Co., Ltd	8,841	Acacia and sugar cane	8 November 2011	ELC contract signed with MAFF(see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Kouy
12	Koulen district	Metrey Pheap Agro-Industry	8,520	Agro-industrial crop, rubber and animal raising	12 June 2012	Sub-decree 92, dated 12 June 2012 to designate the area as a sustainable use zone within Kulen Prom Tep wildlife sanctuary, and to grant it to the company	Kouy
13	Kulen Prom Tep	Ly Chhoung Construction Import Export	6,000	Rubber	23 April 2012	Sub-decree 63, dated 23 April 2012 to designate the area as a sustainable use zone, and to grant it to the company.	Kouy
14	Kulen Prom Tep	Cambodia Dawn Plantation Ltd	9,237	Agro-industrial crop	7 September 2011	Sub-decree 206, dated 7 September 2011 to designate the land as a sustainable use zone, and to grant it to the company.	Kouy
15	Kulen Prom Tep	Serey Mony Transportation & Construction Co., Ltd	6,870	Rubber	15 June 2011	Sub-decree 114, dated 15 June 2011 to designate the land as a sustainable use zone and to grant it to the company	Kouy

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
16	Roveang district	Thy Nga Development and Investment Co., Ltd	6,060	Rubber	25 September 2009	ELC contract signed with MAFF (see also http://www.elc.maff.gov.kh/en/profile/19-pvh/69-pvihea-thynga.html)	Kouy
17	Roveang district	PNT Co., Ltd	7,900	Rubber plantation	5 May 2010	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/19-pvh/110-pvihea-pnt.html)	Kouy
18	Roveang district (Romtum commune, Romdoh commune, Robeab commune, and Reaksmei commune)	Kim Chea Toun Group	8,846	Agro-industrial crop (rubber and acacia) and other crop	6 July 2011	Sub-decree 146, dated 6 July 2011, to designate the land as state private land for the investment of the plantation, and to assigned MAFF and MEF, as well as other relevant authority to proceed with further procedure for the investment.	Kouy
19	Roveang district	China Great Cause	5,980	Rubber and other agro-industrial crop	6 June 2012	ELC contract signed with MAFF (see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Kouy
20	Sangkum Thmei district	FP Malaysia (Cambodia) Plantation Co., Ltd	8,200	Rubber and other industrial crop	30 April 2012	ELC contract signed with MAFF (see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Kouy

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
21	Sangkum Thmei district	Ample Focus (Cambodia)	8,000	Rubber	24 February 2012	Sub-decree 32, dated 24 February 2012 to designate the land as state private land for the investment in plantation; and to assigned MAFF and MEF, as well as other relevant authority to proceed with further procedure for the investment.	Kouy
22	Tbeng Meanchey district and Cheysen district	Lan Feng (Cambodia) International Co., Ltd	9,015	Acacia and sugar cane	08 November 2011	ELC contract signed with MAFF(see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Kooy
Rattanakiri Province							
1	Andong Meas district	Oryong Construction (ACM) Co., Ltd	6,866	Rubber	4 April 2006	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/74-rkiri-oryung.html)	Kachak
2	Andong Meas	Heng Development	8,654	Agro-industrial crop and other crop	25 May 2006	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/73-rkiti-heng.html)	Charai
3	Andong Meas district	Heng Brother	2,361	Rubber, Acacia plantation	31 July 2009	ELC contract signed with MAFF (see also http://www.elc.maff.gov.kh/en/profile/21-rtk/76-rkiri-hengbrother.html)	Charai

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
4	Andong Meas district, Ta Lav commune and Malik communes	Veasna Investment	5,080	Rubber plantation	25 March 2011	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/114-rkiri-vi.html)	Kachak and Tumpoun
5	Andong Meas district, Malik and Nhang communes	Chaing Ly Investment Co., Ltd	1,900	Rubber plantation	29 March 2011	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/115-rkiri-chaingly.html)	Tumpoun
6	Andong Meas district, Ta Lav and Nhang communes	Horng An Oyadav Co., Ltd	9,000	Rubber and other industrial crop	22 September 2011	ELC contract signed with MAFF (http://www.elc.maff.gov.kh/en/profile/21-rtk/117-rtkiri-horng-an.html)	Kachak
7	Andong Meas district, Nhang commune	DM Group	749	Rubber	26 January 2012	ELC contract signed with MAFF (see also: MAFF list of ELC, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Tumpoun
8	Borkeo district and O'Yadao district	Chea Chan Rith Development	5,124	Rubber	12 Nov 2007	Temporary ELC contract signed with MAFF (see also: MAFF list of ELC, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Charai

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
9	Lumphat district, Seda commune	Jing Zhong Ri Cambodia Co., Ltd	9,224	Rubber and other agro-industrial crop	30 May 2011	-Sub-Decree 98, dated 30 May 2011(point 1) to designate the land as a sustainable use zone and to grant it to the company; -Sub-decree 162, dated 22 July 2011, to reclassify the designated land as state private land.	Tumpoun
10	Lumphat district, Seda commune	Kao Su Ea Lev Bm Yoy Stock	8,400	Rubber	5 October 2011	ELC contract signed with MAFF (see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf)	Charai
11	O'Yadao district	Global Tech, Sdn Bhd, Rama Khmer International and Mittapheap Men Sarun (7,000 ha out of the total granted land was granted to Heng Heap company)	20,000	Palm Oil	21 December 1999	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/72-rkiri-globaltech.html)	Charai
12	O'Yadao district	30/4 Gialai Company Limited	9,380	Agro-industrial crops, animal husbandry and processing factory.	26 April 2005	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/71-rkiri-gialani.html)	Charai

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
13	O'Yadao district	Dai Dong Yoeurng Commercial Yornh Stock Co., Ltd (It is changed from 30/4 Gialai Company Limited)	4,889	Agro-industrial crops, animal husbandry and processing factory.	29 January 2010	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/99-rkiri-daidong.html)	Charai
14	O'Yadao district	Heng Heap Investment (land concession excised from Global Tech, Sdn Bhd, Rama Khmer International and Mittapheap Men Sarun)	7,000	Rubber and Jatropha plantation	31 July 2009	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/75-rkiri-heangheab.html)	Charai
15	O'Chum district, Borkeo district, and Andong Meas District	CRD	7,591	Rubber plantation	25 March 2011	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/113-rkiri-crd.html)	Kroeuung
16	Taveng district	Try Pheap Import Export Co., Ltd	9,709	Agro-industrial crops and rubber	9 February 2011	-Sub-decree 25, dated 9 February 2011 to designate the area as a sustainable use zone, and to grant it to the company. -Sub-decree 92, dated 20 May 2011 referred to the above sub-decree to reassign the land as state private land.	Tumpoun and Kroeuung

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
17	Taveng district	Srun Sovannaphoum Investment Co., Ltd	8,998	Rubber and eco-tourism, and special economic zone	15 February 2011	-Sub-decree 28, dated 15 February 2011 to designate the land as a sustainable use zone, and to grant it to the company. -Sub-decree 90, dated 20 May 2011, referring to the above sub-decree to reassign the land as state private land.	Tumpoun and Kroeung
18	Taveng district, Taveng Leu commune	MDS Thmorda SEZ Co., Ltd	9,146	Agro-Industrial, rubber	9 February 2011	-Sub-decree 26, dated 9 February 2011 to designate the land as a sustainable use zone, and to grant it to the company. -Sub-decree 91, dated 20 May 2011, referring to the above sub-decree to classify the land as state private land.	Tumpoun and Kroeung
19	Taveng district, Taveng Leu and Nhang communes, and Andong Meas district	Noupheap Sophy Investment Co., Ltd	9,000	Rubber	15 February 2011	-Sub-decree 29, dated 15 February 2011 to designate the land as a sustainable use land and to grant it to the company; -Sub-decree 89, dated 20 May 2011, referring to the above sub-decree to reclassify the area as state private land	Kroeung
20	Taveng and Andong Meas District,	Krong Pok Ratanakiri Rubber Development Co., Ltd	6,695	Rubber plantation	9 April 2010	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/102-rkiri-krong.html)	Kroeung

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
21	Veunsai district	Hong An Mang Yang K Rubber Development	6,891	Rubber plantation	25 September 2009	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/78-rkiri-hongan.html)	Kroeung
22	Veunsai district	Kiri Development	807	Rubber	31 July 2009	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/21-rtk/77-rkiri-kiri.html)	Kroeung
Stung Treng Province							
1	Sesan district	Sopheak Nika Investment Agro-Industrial Plants Co., Ltd	10,000	Acacia, Trincomali wood, and other plantation crops.	8 August 2005	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/24-stg/91-st-sopheaknika.html)	Phnong
2	Sesan district	Sal Sophea Peanich Co., Ltd	9,917	Acacia, Trincomali wood, and other plantation crops	8 August 2005	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/24-stg/89-st-salsophea.html)	Phnong
3	Sesan district	Grand Land Agriculture Development (Cambodia) Co., Ltd	9,854	Agro-industrial crop	23 January 2006	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/24-stg/86-st-grandland.html)	Phnong
4	Sesan district	Siv Guek Investment	10,000	Acacia, Trincomali wood, and other plantation crops	24 January 2006	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/24-stg/90-st-sivguek.html)	Phnong,

No.	Location	Company Name	Size (hectare)	Purpose	Date of authorization/ approval	Type of document to authorize/approve land concession	Group of indigenous community affected
5	Sesan district	Phou Mady Investment Group	9,854	Acacia, Trincomali wood, and other plantation crops	24 January 2006	ELC contract signed with MAFF (see also: MAFF list of ELCs, dated 8 June 2012 available (in Khmer only) at http://www.elc.maff.gov.kh/en/attachments/article/122/Company%20Name.pdf ; and http://www.elc.maff.gov.kh/en/profile/24-stg/88-st-phoumady.html)	Phnong
6	Siem Pang district	Sekong Aphivath Co. Ltd	9,850	Agro-industry and animal husbandry	12 April 2006	ELC contract signed with MAFF (see also: http://www.elc.maff.gov.kh/en/profile/24-stg/92-st-sekong.html)	Phnong

Annex III

Union Development Group Company, Ltd. Botum Sakor National Park, Koh Kong province

I. Concessions granted in Botum Sakor National Park

The 171,250 hectare Botum Sakor National Park in Koh Kong Province was established by Royal Decree in 1993²⁸⁵ and classified as a natural park (an area reserved for nature and scenic views, which is to be protected for scientific, educational and entertainment purposes). It was later designated as a protected area under the 2008 Protected Areas Law (see section III (D) 1.1). Nevertheless, since that time, the Government has granted land concessions within the national park to at least nine private companies for the planting of agro-industrial crops (for example, acacia, palm oil, and rubber), as well as for eco-tourism, commercial developments, water reservoirs, and hydropower dams.²⁸⁶ The concessions have been granted through the issuance of sub-decrees to reclassify protected areas into sustainable use zones, which raises issues with compliance with the legal framework for the conservation of protected areas (see analysis in sections IV-VI).

On 9 May 2008, the Royal Government, represented by the Minister of Environment, signed a long-term lease contract of 99 years with Union Development Group Company, Ltd. for the construction of a commercial development zone and resort to attract tourists and further investment over **36,000 hectares** in the Kiri Sakor and Botum Sakor districts. The contract was signed by the Minister for Environment, approved by the Minister of Economy and Finance, and witnessed by the Minister of Commerce.²⁸⁷ This land covers a large portion of the coast in Kiri Sakor and Botum Sakor districts, including areas that are critical for the conservation and protection of the environment, as well as 12 villages in five communes.

On 9 April 2008, one month prior to the signing of the lease contract, the King signed a Royal Decree²⁸⁸ to amend the 1993 Royal Decree to excise the 36,000 hectares from Botum Sakor National Park's total area of 171,250 hectares, and to reclassify the 36,000 hectares as state private land, thereby making it eligible to be granted as a long-term land concession. That same month the Government issued another sub-decree²⁸⁹ to reclassify the excised 36,000 hectares from Botum Sakor National Park as private state land. In addition, in August 2011, the Government issued a sub-decree to reclassify an additional 9,100 hectares as a sustainable use

²⁸⁵ Royal Decree NS/RKT on the Establishment and Designation of Protected Areas, of 1 November 1993.

²⁸⁶ The companies include: 1) Sinomexim Investment Co., Ltd (4,280 hectares); 2) Union Development Group Co., Ltd (9,100 hectares); 3) Union Development Group Co., Ltd (36,000 hectares); 4) Paradise Investment Co., Ltd (9,137 hectares); 5) L.Y.P Group Co., Ltd (4,100 hectares); 6) The Green Rich Co., Ltd (60,200 hectares); 7) Kiri Sakor Koh Kong SEZ 2 (2,260 hectares); 8) Koh Kong SEZ Co., Ltd (9,977 hectares); and 9) JW Cambodia Eco Holidays (5,000 hectares).

²⁸⁷ Contract on the lease of land within the geographical area of Kiri Sakor and Botum Sakor districts in Koh Kong province, between Royal Government of Cambodia and Union Development Group Co., Ltd. 2008.

²⁸⁸ Royal Decree No. NS/RKT/0408/392 on the Amendment of article 2, point 1, item 5 of the 1 November 1993 Royal Decree, 9 April 2008.

²⁸⁹ Sub-decree No. 38 ANK/BK on the reclassification of state land of Botum Sakor National Park (36,000 hectares) as state private land, 24 April 2008.

zone and granted a second land concession to Union Development Group Company, Ltd. to develop a water reservoir and power plant.²⁹⁰

II. The company and the lease contract

Under the contract, Union Development Group is authorized to develop infrastructure that would support the tourism sector, including casinos, condominiums, apartments, and resorts. The company is authorized to clear forest area while undertaking its development, per the master plan, but is liable to pay royalties should it log trees with any economic value.

The lease contract makes reference to a number of sub-decrees²⁹¹ and laws governing the granting of land concessions,²⁹² as well as a number of decisions from meetings with the Council for Development of Cambodia (CDC), including the intent to apply the “leopard skin policy” in order to avoid development on land already inhabited by communities. The terms of the 99 year contract allow for it to be extended for another term²⁹³ and the contract allows the company to sub-contract, transfer rights (in whole or in part) and elements of the development project, or sell facilities to a third person. The contract also allows the Government to sell the leased land in whole or in part, with priority given to the company or the company’s sub-contractor.

As with any large scale project, an environmental and social impact assessment was required, and should have included participation of affected communities (see sections III (D) 1.1 and 1.3 – Law on Protected Areas and Laws on Environmental Protection and associated sub-decrees) and while an assessment was reportedly undertaken, there appears to have been no community consultation nor is it available for public review.

Despite the fact that the concession was to implement the “leopard skin policy,” disruption to the existing villages was envisioned and, according to the lease contract, the Royal Government of Cambodia is responsible for the administrative functions associated with relocation and compensation, in cooperation with Union Development Group, who is responsible for the costs of compensation and for the building of the relocation site. In the case that a resolution to relocate certain villagers or legal land possessors from some areas was not found, activity in these areas is to be suspended.

²⁹⁰ Sub-decree, No.178, 3 August 2011.

²⁹¹ The sub-decrees are as follows: the Sub-decree No.129 ANK/BK on the Rules and Procedures on Reclassification of State Public Properties and Public Entities, 27 November 2006; Sub-decree No.114 ANK/BK on the Mortgage and Transfer of the Rights over a Long-Term Lease or an Economic Land Concession, 29 August 2007 on the lease or transfer of rights of long term leases or rights regarding economic land concessions; Sub-decree No.38 on the reclassification of state land of Botum Sakor National Park (36,000 hectares) as state private land, 24 April 2008.

²⁹² Including Cambodian Law on Investment, 1994 (as amended in 2003); Land Law, 2001; Protected Areas Law, 2008; and the Royal Decree No. NS/RKT/0408/392 on the Amendment of Article 2, point 1, item 5 of the 1 November 1993 Royal Decree, 9 April 2008.

²⁹³ According to article 1.4 of the lease, the Government will hand over the leased location to the company through an official letter not later than 10 days following an approval of their master plan and development proposal. The date on the handover of the location shall be considered as the starting date of the lease to the company. The contract can be extended for another term, following an agreement from both parties and the new conditions. The intent to extend must be proposed one year prior to the end of the contract.

III. Communities living in the concession area

The villages affected by the project have been in existence for generations. The community members are a mix of families who settled in the area before the Sihanouk regime in the 1960s, who relocated during or after the Khmer Rouge regime, and who arrived in the 1980s (after the fall of the Khmer Rouge). More families moved there later following private purchase of land plots. The Government formally recognized these villages in the 1990s following the end of the civil war. According to the district officials involved in the assessment of the occupied land, the project could affect 1,163 families inhabiting residential land and tending to orchards in Kiri Sakor's three communes (Koh Sdach, Phji Meas, and Prek Khsach), and in Botum Sakor's two communes (Thmar Sar and Tanou).

The affected communities were reportedly not consulted about the project and its potential impacts, but had noticed company representatives and governmental officials travelling throughout their communes and measuring land before the signing of the contract in 2008. The communities were reportedly officially informed of the project, including a promise for compensation, for the first time during a visit in November 2009 to Kiri Sakor district by officials of the Ministry of the Environment, Royal Cambodia Armed Forces, the Koh Kong provincial government and representatives of Union Development Group.

IV. Implementation of the project – compensation and relocation

In total, 1,163 families, and at least one primary school and three Buddhist pagodas will need to be relocated. Despite a decision to implement the “leopard skin policy,” which would minimize the need for relocation and interruptions to livelihood, this plan was reportedly abandoned and a counter decision was implemented to relocate communities away from the coastal areas, many of whom depend on access to the Gulf of Thailand for their food and income. Officials of the Government and representatives of Union Development Group affirmed that the “leopard skin policy” would not be implemented for reasons linked to water and sanitation; that is, it was claimed that this policy was not viable because the communities living on the coast pollute the water, and to allow them to remain in their current villages would negatively affect the company's investment.

Discussions at the Ministry of Environment on relocation and compensation reportedly began in early- to mid-2009 and the Minister laid out options for communities in a letter to the Prime Minister on 27 May 2009, depending on the status of the land and the level of documentation households possessed.²⁹⁴ Possibilities for compensation included: payment (reportedly between USD 250 and USD 8,000 per hectare of farmland); a single family house on the relocation site to be built about 20 kilometers from the coast; and the allocation of residential and/or farming land. The four categories of compensation consisted of nine possible cases.²⁹⁵ Category one (two cases)²⁹⁶ are those households who have land

²⁹⁴ Ministry of Environment Letter No. 1529, dated 27 May 2009.

²⁹⁵ The Ministry of Environment's letter, No.496, dated 20 October 2009, informed the Provincial Governor of Koh Kong province about the decision on the compensation policy and standard: **Standard A:** a maximum financial compensation of USD 8,000 per hectare for the farm land or orchard; **Standard B:** a home – 1) the company shall prepare a new location within the leased land area when the company has to remove any structures as required, but upon an agreement from the people; 2) the company shall provide adequate compensation or rebuild a house that complies with the standard of the house before it was removed; and 3) the newly established site shall be equipped with adequate infrastructure; **Standard C:** 75 percent financial compensation of Standard A for people considered local, and 50 percent of Standard A for those considered outsiders (a maximum of USD 6,000 per hectare); **Standard D:** a home (same as Standard B).

title issued before 1 November 1993; Category two (two cases)²⁹⁷ are those households who have land title issued after 1 November 1993; Category three (three cases) are those households considered to be “local” who have no land title but have occupied or used land; and Category four (two cases) are those households who have no land title, but who have some documents certified by the village chief and commune chief.

An inter-ministerial working group reportedly set up an office at the Kiri Sakor district office and at the Thamsar commune office in Botum Sakor district from 10 August 2009 to 10 October 2009 and invited affected households to bring supporting documents (identification, family books, and documents related to land transactions, sale or title) for review by the compensation committee. Compensation was reportedly to have been negotiated after the registration of existing land, starting with the land of communities located in Prek Smach village, Koh Sdach commune, Kiri Sakor district (678 hectares).

Subsequently, communities were reportedly informed that they were on state land and therefore were obliged to move. Negotiations for compensation packages reportedly took place in 2010 and approximately 1,000 families relocated during 2011. Some families resisted relocation and continue to do so, and some of the villagers reported that they accepted the compensation under pressure or threat, or lack of information or alternatives. Some other villagers voluntarily took the offer of compensation due to the small size of their original plot of land.

V. Relocation conditions

The relocation site is spread over 4,000 hectares of land located outside the investment project of Union Development Group, deep inside the Botum Sakor National Park and a significant distance from the coast. According to district officials, the Government issued a sub-decree to excise 4,000 hectares from the park for this purpose. Presumably this will lead to further environmental impacts as forest will need to be cleared for the relocation sites, and an influx of people will no doubt increase incidents of forest clearing, poaching and environmental pollution in this sensitive area. Despite the approximately 1,000 families who had relocated, due to the significant distance from the coast, many families who accepted compensation do not regularly stay at the relocation site due to a scarcity of options for income generation. Many whose livelihoods depended on fishing have returned to their old villages to either stay with their former fellow community members who resisted relocation or have set up a temporary shelter in order to go fishing.

²⁹⁶ Case 1: For those who have land title issued before 1 November 1993, and have used the land (housing or farmland), whether they are considered local or outsiders, the compensation for their farmland and/or orchard is Standard A, and for housing is Standard B. The committee will not compensate the land size claimed by the people who are not specified in the land title. Case 2: For those who have land title issued before 1 November 1993, but have not used the land, whether they are local people or outsiders, the standard compensation is 25 percent of Standard A (which is USD 2,000 per hectare). Land claimed that is more than the size specified in the land title will not be considered for compensation.

²⁹⁷ Case 3: For those who have land title issued after 1 November 1993, and have exploited the land either by having a house on the land or having farmed the land, whether they are considered local people or outsiders, the standard compensation is Standard C for farmland and orchard, and Standard D for residential property. Case 4: For those who have land titles issued after 1 November 1993, but have not exploited the land, whether they are considered local people or outsiders, the compensation is 25 percent of Standard A (which is USD 2,000 per hectare of farmland). Any land claimed that is more than the size specified in the land title will not be compensated.

While compensation packages differ, in general, relocated families have been offered residential land of 50 meters by 100 meters, a constructed wooden house of 6.5 meters by 7.5 meters, plus a plot of farmland of two hectares. The offered farmland is forested land, in some cases adjacent to the residential land, but as of late December 2011, most of the relocated families reported not having received the promised two hectares of farmland.

Regarding infrastructure, as of February 2012, Union Development Group had cleared the land for a road across the resettlement site, had built one school, and provided six wells. The company reportedly hired armed security personnel (private and gendarmerie) and established and maintained a check-point to restrict travel to some villages (for example, Peam Kay village and Prek Smach village) where there are villagers who resisted relocation. Representatives of non-governmental organizations have reportedly been denied use of this road and access to certain areas of the park. The company cited traffic accidents and concerns about the security of company property as the need for these restrictions, but following negative media attention of the case in early 2012 the monitoring at the checkpoints has reportedly relaxed.

VI. Demonstrations and discord

Many affected communities have protested since 2010 to express their opposition to the relocation. In May 2010, around 200 families came to Phnom Penh to submit a complaint and to call on the Prime Minister to intervene in the land dispute and to address the inadequate compensation packages. The latest protest was the blocking of National Road 48 on 6 December 2011 for eight hours by relocated families who were calling for the authorities and the company to keep their promise to allocate two hectares of farm land to those who accepted to move to the relocation site.

As of February 2012, more than 100 families continued to resist relocation and the offered compensation and were continuing to live in their villages, including in Koh Sdach commune (Peam Kay village and Prek Smach village), Phji Meas commune (Tany village, Kien Kralanh village, and Phji Meas village), Thmar Sar commune (Chamlong Kor village), and Prek Khsach commune (Samroang Keo village and Yeay Sen village).

Villagers resisting relocation have continued their efforts in the hope that the Government will not relocate them, but their efforts have not borne fruit, or have been deliberately thwarted. On 28 February 2012 some communities held a press conference in cooperation with Phnom Penh-based non-governmental organizations to make their grievances heard. In March 2012 some community members traveled to Phnom Penh to participate in the ASEAN People's Forum meeting and submit a complaint to the Embassy of the People's Republic of China and were briefly detained at the Police Commissariat of Phnom Penh on 31 March 2012 and escorted back to their villages.

With the new directive on ELCs of 7 May 2012, some households assumed that those who had not accepted relocation would be eligible for titling as part of the broad implementation of the "leopard skin policy," (see section III (H)). However, it was reported that the youth deployed to the area were under orders not to demarcate the land slated for use by Union Development Group.

As of the writing of this report, the dispute among more than 100 families with Union Development Group remained unresolved, while the construction continued as planned.

Annex IV

Jing Zhong Ri Cambodia Company, Ltd economic land concession on Tumpuon indigenous land, Lumphat district, Ratanakiri province

1. The Tumpuon indigenous peoples

The Tumpuon indigenous communities in Seda commune (more than 500 families from the villages of Samoth Leu, Samoth Kroam, Thmei and Tatoat), Lumphat district, Ratanakiri province have been affected by economic land concessions granted to Jing Zhong Ri Cambodia Co., Ltd. and other companies. Situated within the Lumphat Wildlife Sanctuary,²⁹⁸ the community members from these villages have relied on rice farming, resin tree tapping, gathering of forest products, and cattle-raising for their livelihoods. As part of their culture and tradition, they practice slash and burn agriculture and maintain spirit forests and burial grounds.

Like many other indigenous peoples in Cambodia, in order to protect their community land, the Tumpuon communities are in the process of applying for collective land title with the support of the Government and development partners (see section III (F)). Following self-identification, Tumpuon indigenous people from Samoth Leu, Samoth Kroam Thmei and Tatoat villages were recognized by the Ministry of Rural Development in May 2010. At the time of writing this report, the Ministry of Interior had accepted their application and recognized them as a legal entity, allowing them to proceed with the steps necessary to establish internal rules and demarcate their land. These processes are significant, as they provide official recognition of the traditions, culture and spiritual practice of the Tumpuon, as well as their right to develop their land.

II. Economic land concessions in Lumphat Wildlife Sanctuary

The Lumphat Wildlife Sanctuary was established and classified as a wildlife sanctuary by Royal Decree.²⁹⁹ The sanctuary covers a land area of 250,000 hectares in Ratanakiri and Mondulakiri provinces. During the period from March 2011 to June 2012, the Government signed at least six sub-decrees that designate various areas of land within Lumphat Wildlife Sanctuary as sustainable use zones in order to grant the land to private companies for the development of agro-industrial crops. The companies concerned are: 1) Daun Penh Agrico Co. Ltd (8,825 hectares); 2) Mkod Pich Development Agro-Industry (1,950 hectares); 3) Hoang Anh Lumphat Co. Ltd (9,173 hectares); 4) Hoang Ang Andong Meas Co. Ltd (9,470 hectares); 5) Roath Sokhon Incorporation (9,000 hectares); and 6) Jing Zhong Ri Cambodia Co. Ltd (9,224 hectares). After these sub decrees, the Government issued additional sub-

²⁹⁸ Lumphat wildlife sanctuary was recognized as one of the protected areas under the 1993 Royal Decree of 1 November 1993 on the Protection of Natural Areas. It is under the administration of the Ministry of Environment.

²⁹⁹ The Royal Decree of 1993 states that wildlife sanctuaries are natural areas preserved in order to protect wildlife, vegetation and ecological balance. The Law on Protected Areas of 2008 explained in broader terms that wildlife sanctuaries are “areas in land and/or water territories, which require active interventions for management purposes to ensure maintenance of habitats and/or to meet necessary conditions for any species of animals or plants.”

decrees to reclassify the designated sustainable use zone land as private state land. The granting of these land concessions raises issues with compliance with the legal framework for the conservation of protected areas (see analysis in sections V (C) and VI).

Jing Zhong Ri Cambodia Co. Ltd received approval from the Council of Ministers in May 2011 authorizing investment and development of agro-industrial and rubber plantations within the sanctuary for a period of 70 years.³⁰⁰ The authorization required the preparation of a master plan under the auspices of the Ministry of Environment, and stipulated that care should be taken to avoid affecting legal residential and farmland, as well as forest areas and waterways. Just 18 days after the Council of Ministers letter was signed, the Government issued a sub-decree to designate the land as a sustainable use zone and to grant it to Jing Zhong Ri.³⁰¹ Seven weeks after this sub-decree was issued, the Government issued another sub-decree to reclassify the designated sustainable use zone as state private land for development by the Jing Zhong Ri Company.³⁰²

During my visit to Ratanakiri, I was informed by a provincial official that an environmental impact assessment was conducted prior to the commencement of the activities of Jing Zhong Ri, but it was not publicly shared. A consultation with affected communities prior to the commencement of activities was reportedly lacking or not comprehensive (contrary to the legal framework, see section VI (D)). Some Tumpuon peoples were reportedly only aware of the concession granted when Jing Zhong Ri arrived in their locality in November 2011 with plans to commence development of a rubber plantation on the land they traditionally inhabited and cultivated (both farmland and spirit forest). It would seem that the granting of the land concession to Jing Zhong Ri was in direct contravention of the rights afforded to indigenous peoples in the 2001 Land Law and undermines the processes set out in the 2009 sub-decree on indigenous land registration (see sections VI (E) and VII (G) and (H)). My efforts to contact company representatives have been to no avail.

III. Action by the Tumpuon indigenous community

Following the letter of authorization from the Ministry of Environment to convert the land, Jing Zhong Ri submitted a letter to the Ratanakiri Provincial Governor on 8 December 2011 requesting permission to start implementing their plans for development of the land, including in the use of heavy machinery. On 13 December 2011 the Director of the Ratanakiri Environment Department authorized the use of machinery; however, ostensibly to avoid encroachment on the Tumpuon peoples' land, he wrote a letter to prevent the bulldozing of land along the boundary of the concession until the land had been demarcated. Nevertheless, activity commenced, causing tensions between some affected communities, local authorities and the company's representatives.

On 25 December 2011, a group of Tumpuon people from the affected villages went to the Jing Zhong Ri site to attempt to stop the company from clearing the forest and building a

³⁰⁰ Letter, from the Deputy Prime Minister and as Minister of the Council of Ministers to the Minister of the Ministry of Environment, 12 May 2011. The letter made reference to a letter dated 4 May 2011 from the Ministry of Environment including an annotation of the Prime Minister from 12 May 2011, stating that the Government agreed with the Ministry of Environment's proposal to authorize Jing Zhong Ri Co., Ltd. to go ahead with its investment.

³⁰¹ Sub-Decree 98, 30 May 2011 (point 1) to designate the land as sustainable use zone within Lumphat Wildlife Sanctuary, and to grant it to Jing Zhong Ri Co. Ltd.

³⁰² Sub-decree 162, 22 July 2011, referring to sub-decree 98, 30 May 2011, to reclassify the designated sustainable use zone land as private state land.

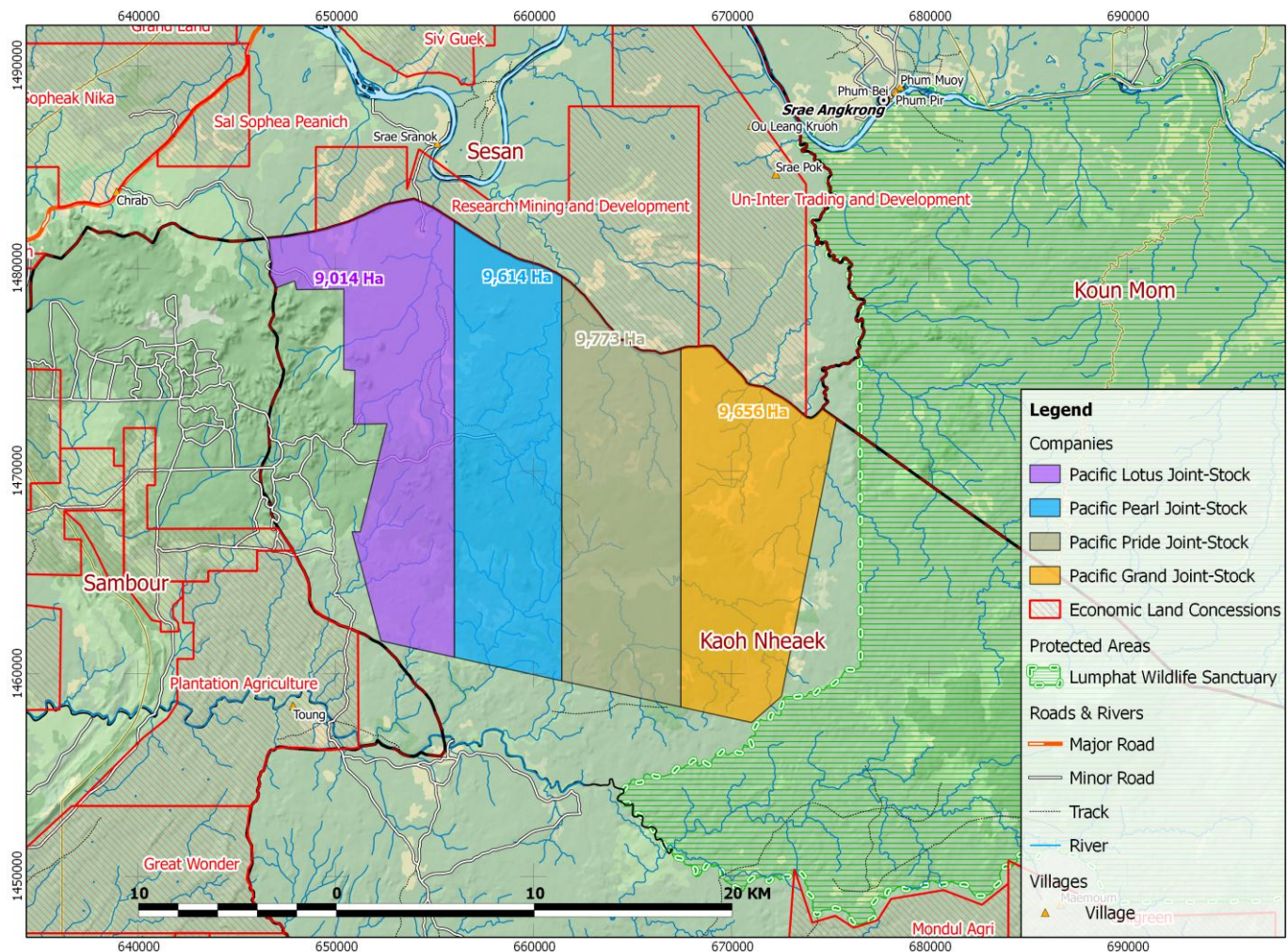
ditch which would mark the concession boundary. On 9 February 2012, villagers tried to stop the company from clearing their spirit forest (two hectares had reportedly already been cleared by this time), and a group of 100 protesters were thwarted by security guards associated with the company (one shot was fired). The community members became angry, attacked a tractor and held four company staff members at the commune office. It was reportedly only at this point that the Ratanakiri Governor and other relevant authorities came to the commune office to meet the affected families and negotiate the release of the company staff members, and promised to find a solution. Following this incident, and in response to the community's highly publicized move, various officials and villagers were questioned about who was responsible for the protest.

Subsequently, the affected community members were informed that Jing Zhong Ri and other companies operating in the area would not affect their farmland but would develop the surrounding land in the implementation of a "leopard skin policy." Since the February 2012 incident and as of the writing of this report, the company had suspended its activity. It was reported to me that the company had told the villagers that it would resume their activity after the commune elections in June 2012. Despite this suspension, the Tumpoon peoples have not been granted interim protective measures while they proceed with the application of their collective land title (see section VI (E)) and it is unclear when further development of the land will resume.

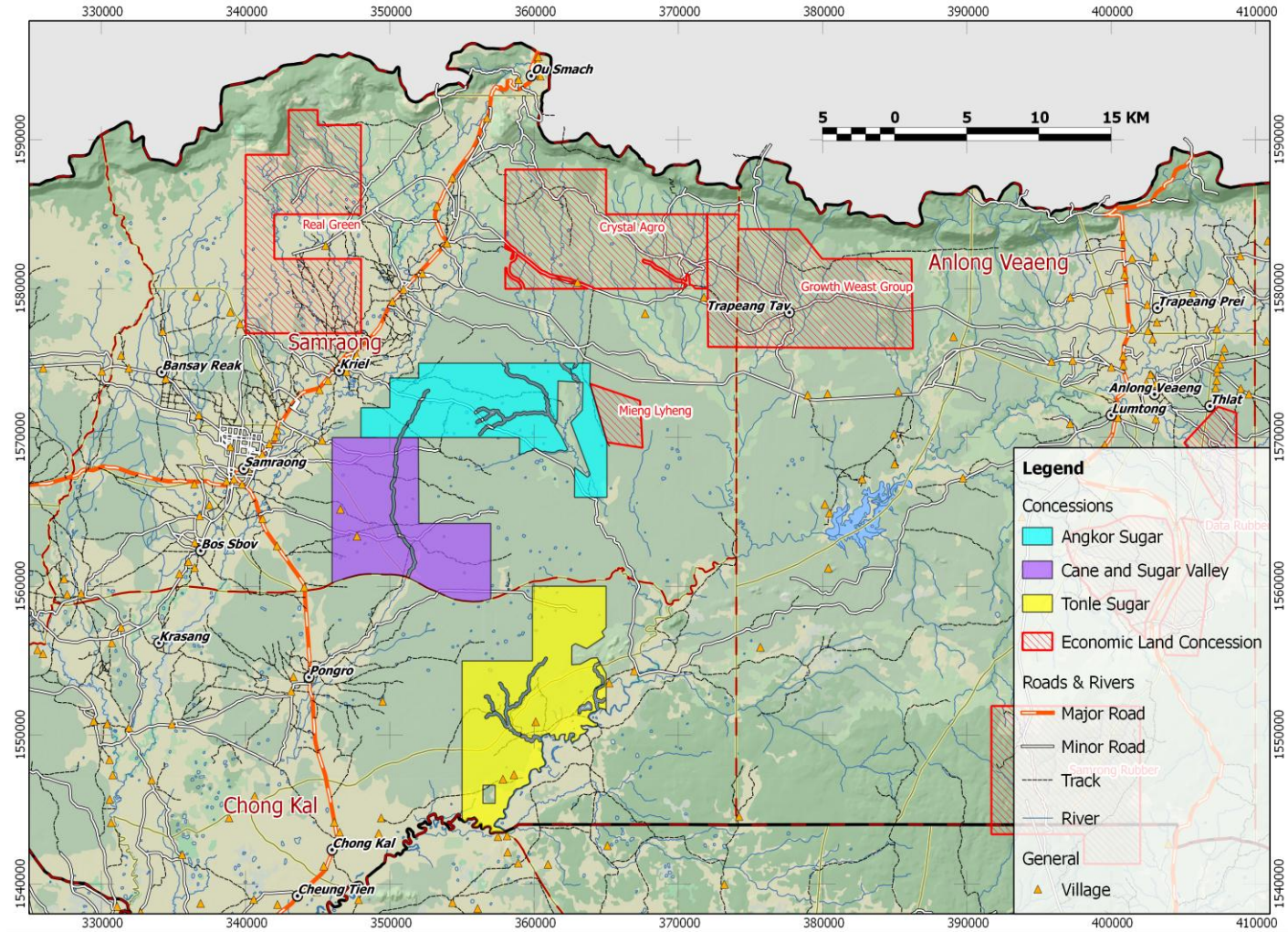
Annex V

Maps of contiguous concessions

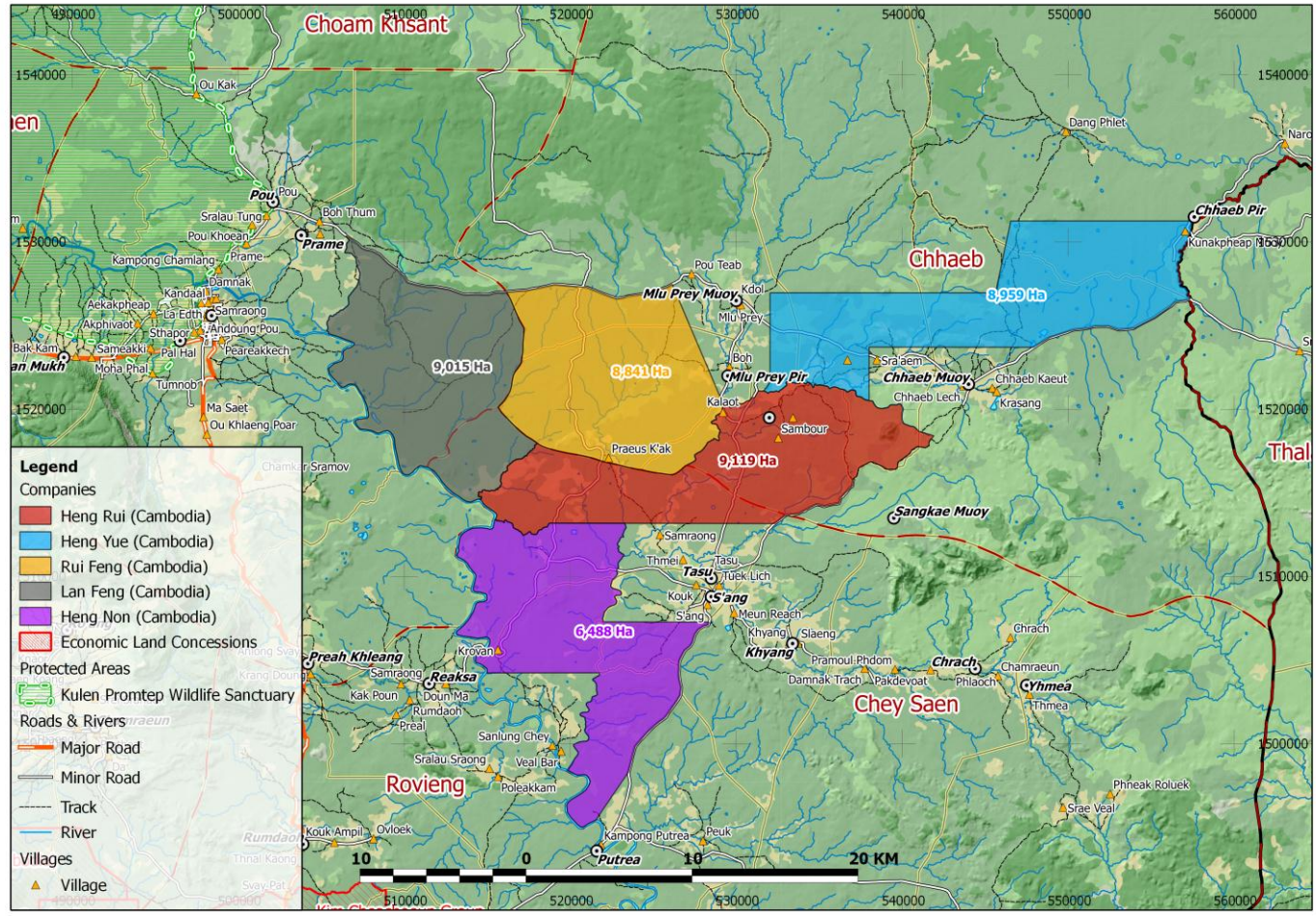
Contiguous concessions for rubber plantations granted to four affiliated companies in Mondulkiri Province



Contiguous concessions for sugar cane plantation granted to three affiliated companies in Oddar Meanchey Province



Contiguous concessions for acacia and sugar cane plantations granted to five affiliated companies in Preah Vihear Province



Contiguous concessions for sugar cane plantations granted to two affiliated companies in Kampong Speu Province

